Court of Claims No. 20740 Ind. Aff. 20741

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 338.

THE UNITED STATES, APPELLANT,

vs.

THE SISSETON AND WAHPETON BANDS OF SIOUX INDIANS.

No. 339.

THE SISSETON AND WAHPETON BANDS OF SIOUX INDIANS, APPELLANTS,

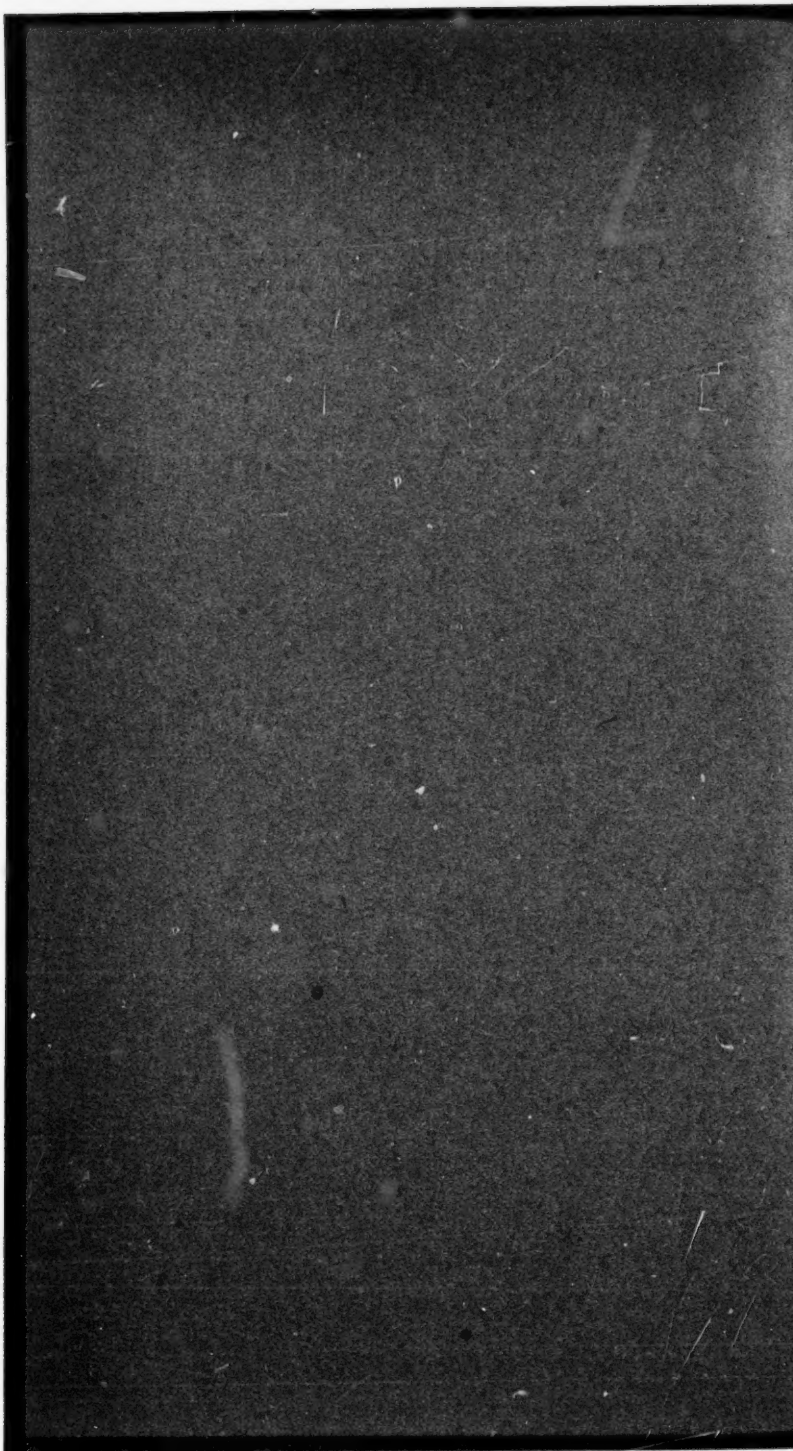
vs.

THE UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

FILED MAY 25, 1907.

(20740, 20741.)



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516—07——1

1 In the Court of Claims.

THE SISSETON AND WAHPETON Bands of Sioux Indians
vs.
THE UNITED STATES.
No. 22524.

I.—Supplemental petition.

(Filed July 28, 1906.)

To the honorable the Chief Justice and the Associate Justices of the Court of Claims:

Your petitioners, the Sisseton and Wahpeton Bands of Sioux Indians, under the authority of the act of Congress hereinafter cited (Public No. 258, approved June 21, 1906), file this their supplemental petition, and respectfully state and show—

1. That by an act of Congress approved March 3, 1901, this honorable court was empowered to—

"* * * hear, ascertain, and report to Congress what members of the Sisseton and Wahpeton Bands of Dakota or Sioux Indians remained loyal to the Government of the United States, and
2 were not directly or indirectly concerned in the depredations of certain bands of Sioux Indians named in the act of Congress approved February sixteenth, eighteen hundred and sixty-three, entitled 'An act for the relief of persons for damages sustained by reason of depredations and injuries by certain bands of Sioux Indians,' or other acts upon the subject; and to hear, ascertain, and report to Congress what annuities provided by the treaty with said bands of July twenty-third, eighteen hundred and fifty-one, would now be due the loyal members of said bands if the said act of Congress had not been passed," etc.

2. That under the authority of said act your petitioners filed their original petition, presented a large volume of evidence, briefed and argued the case, with the result that on January 18, 1904, the court delivered an adverse opinion, finding, among other things, that it was impossible, from the evidence, to determine what proportion of the claimant bands remained loyal to the United States during the hostilities in question. (39 Ct. Cls., p. 172.)

3. That by an act of Congress, being Public No. 258, and entitled "An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven," approved June twenty-first, 1906, it is provided—

"That jurisdiction be, and hereby is, conferred upon the Court of Claims in Congressional case numbered twenty-two thousand five

hundred and twenty-four, on file in said court, entitled 'The Sisseton and Wahpeton bands of Sioux Indians against the United
3 States,' to further receive testimony, hear, determine, and render final judgment in said cause, for balance, if any is found due said bands, with right of appeal as in other cases, for any annuities which would be due to said bands of Indians under the treaty of July twenty-third, eighteen hundred and fifty-one (Tenth Statutes at Large, page nine hundred and forty-nine), as if the act of forfeiture of the annuities of said bands, approved February sixteenth, eighteen hundred and sixty-three, had not been passed; and to ascertain and set off against the amount found to be due to said Indians, if any, all payments or other provisions of every name or nature made to or for said bands by the United States or to or for any members thereof, since said act of forfeiture was passed, which are properly chargeable against said unpaid annuities.

"Upon the rendition of such judgment, and in conformity therewith, the Secretary of the Interior is hereby directed to determine which of said Indians now living took part in said outbreak and to prepare a roll of the persons entitled to share in said judgment by placing on said roll the names of all living members of the said bands residing in the United States at the time of the passage of this act, excluding therefrom the names of those found to have participated in the outbreak; and he is directed to distribute the proceeds of such judgment, except as hereinafter provided, per capita to the persons borne on the said roll; and the court shall consider the evidence now on file in said cause in connection with such other evidence as may hereafter be adduced therein, and the said cause shall be advanced on the docket of the Court of Claims and of the Supreme Court of the United States if the same shall be appealed; and the court shall fix and determine, after full hearing, the amount that shall be deemed reasonable and just to be paid to attorneys for said Indians for services rendered or to be rendered in said cause, and the court may consider all contracts or agreements heretofore entered into by said
Indians with attorneys who have represented them in the mat-
4 ter of their claim, and the Secretary of the Treasury is hereby directed to pay the said sum of money to the said attorneys immediately upon the rendition of final judgment, out of the proceeds of said judgment, if any, when an appropriation for the payment thereof is made by Congress."

In other words, the court is to state the account between the United States and the claimant bands, charging the United States with the amount of the unpaid annuities, less any payments which are properly chargeable against said unpaid annuities, and to award judgment for the balance.

4. That by the terms of said treaty of July 23, 1851, as amended, the United States became indebted to your petitioners to the extent of fifty annual payments of $73,600 each, amounting, in the aggregate, to $3,680,000.

5. Following the outbreak referred to in the jurisdictional act, Congress, on February 16, 1863, under the impression that all the Mississippi Sioux (including your petitioners) had been involved therein, passed an act (12 Stat. L., 652) declaring all the annuities of your petitioners, due them under previous treaties, to be forfeited to the United States.

6. At the date of the passage of said act (February 16, 1863), twelve of said installments of $73,600.00 each, amounting in the aggregate to $883,200.00, had been appropriated by Congress and $760,690.88 thereof paid to your petitioners, the balance of the amount so appropriated ($122,509.12) being retained by the United States.

5 7. On the 12th day of December, 1889, an agreement was entered into between the United States and that portion of the petitioning bands located upon the Lake Traverse Reservation in South Dakota for the cession of the surplus lands within said reservation.

By article 3 of said agreement the amount of the annuities due such of the scouts, or those who served in the Army during and subsequent to the outbreak of 1862, and their families, as resided upon the said reservation (estimated to be about one-fourth the whole amount of the annuities so confiscated) was restored to them, and the annuities continued at the rate of $18,400 per year to the date of the expiration of the said treaty of 1851, the total amount appropriated for this purpose being $581,978.37.

In addition to the foregoing, by the Indian appropriation acts of March 2, 1891 (26 Stats., 1037), March 3, 1893 (27 Stats., 624), and March 2, 1895 (28 Stats., 889), sums aggregating $206,353.30 were appropriated to pay scouts and their families who were not parties to the agreement of 1889, the balance due them up to July 1, 1901, on account of said confiscated annuities. The said last-mentioned sum of $206,353.30 was distributed among 138 persons, 65 of whom were found to belong to the Medawakanton and Wahpakoota bands and 13 to the petitioning bands. The tribal identity of the other 60 persons sharing in this fund could not be determined. Thus it appears that one-fifth of the identified Indians who participated in the distribution of this money were members of your petitioning

6 bands. Adopting this same proportion as to the unidentified Indians, only 25 of your petitioning bands out of the whole number of 138 shared in said payment, and therefore your petitioners charge that they received but twenty-five one hundred and thirty-eights (25/138) of the said sum of $206,353.30, amounting to $37,382.84.

8. Your petitioners therefore charge that the proper and correct statement of the account between themselves and the United States, which the court is, by said jurisdictional act, authorized to state, is in words and figures following, to wit:

The United States, Dr. to the Sisseton and Wahpeton bands of Sioux.

To 38 annuities of $73,000.00 each		$2,796,800.00
To annuities appropriated but unpaid at the date of the forfeiture act		122,509.12
		2,919,309.12
Deduct amount paid scouts and their families under the agreement of 1889	$581,978.37	
Deduct 25/138, amount paid to the scouts not parties to the agreement of 1889	37,382.84	
		619,361.21
Balance due petitioners		2,299,947.91

Wherefore your petitioners charge that the United States is
7 indebted to them under the treaty of July 23, 1851, after deducting all just and proper charges against said unpaid annuities provided in said treaty, in the sum of $2,299,947.91.

In view of the premises, your petitioners pray the judgment of this honorable court and that they have judgment against the United States in the said sum of two million two hundred ninety-nine thousand nine hundred forty-seven dollars and ninety-one cents.

CHARLES A. MAXWELL,
GEORGE S. CHASE,
Attorneys for Petitioners.

WILLIAM H. ROBESON,
MARION BUTLER,
J. M. VALE,
Of Counsel.

DISTRICT OF COLUMBIA, *ss:*

This day personally appeared before me Charles A. Maxwell, and in due form of law made oath that he is one of the attorneys for the petitioners; that he has read the foregoing petition, and that the statements therein contained are true to the best of his knowledge, information, and belief.

CHARLES A. MAXWELL.

Subscribed and sworn to before me this 27th day of July, 1906.
[SEAL.] K. E. WHEATLEY,
Notary Public in and for the District of Columbia.

8 In the Court of Claims.

THE SISSETON AND WAHPETON BANDS OF SIOUX INDIANS
vs.
THE UNITED STATES. } No. 22524.

II.—Amended supplemental petition.

(Filed January 26, 1907.)

To the honorable the chief justice and the associate justices of the Court of Claims:

Your petitioners, the Sisseton and Wahpeton bands of Sioux Indians, come now by leave of the court first had and obtained,

and under the authority of the act of Congress hereinafter cited (Public No. 258, approved June 21, 1906) file this their amended supplemental petition and respectfully state and show—

1. That by an act of Congress approved March 3, 1901, this honorable court was empowered to—

"* * * * hear, ascertain, and report to Congress what
9 members of the Sisseton and Wahpeton bands of Dakota or Sioux Indians remained loyal to the Government of the United States, and were not directly or indirectly concerned in the depredations of certain bands of Sioux Indians named in the act of Congress approved February sixteenth, eighteen hundred and sixty-three, entitled 'An act for the relief of persons for damages sustained by reason of depredations and injuries by certain bands of Sioux Indians,' or other acts upon the subject; and to hear, ascertain, and report to Congress what annuities provided by the treaty with said bands of July twenty-third, eighteen hundred and fifty-one, would now be due the loyal members of said bands if the said act of Congress had not been passed," etc.

2. That under the authority of said act your petitioners filed their original petition, presented a large volume of evidence, briefed and argued the case, with the result that on January 18, 1904, the court delivered an adverse opinion, finding, among other things, that it was impossible from the evidence to determine what proportion of the claimant bands remained loyal to the United States during the hostilities in question. (39 Ct. Cls., p. 172.)

3. That by an act of Congress, being Public No. 258, and entitled "An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven," approved June twenty-first, 1906, it is provided—

10 "That jurisdiction be, and hereby is, conferred upon the Court of Claims in Congressional case numbered twenty-two thousand five hundred and twenty-four, on file in said court, entitled 'The Sisseton and Wahpeton bands of Sioux Indians against the United States,' to further receive testimony, hear, determine, and render final judgment in said cause, for balance, if any is found due said bands, with right of appeal as in other cases, for any annuities which would be due to said bands of Indians under the treaty of July twenty-third, eighteen hundred and fifty-one (Tenth Statutes at Large, page nine hundred and forty-nine), as if the act of forfeiture of the annuities of said bands, approved February sixteenth, eighteen hundred and sixty-three, had not been passed; and to ascertain and set off against the amount found to be due to said Indians, if any, all payments or other provisions of every name or nature made to or for said bands by the United States or to or for any members thereof, since said act of forfeiture was passed, which are properly chargeable against said unpaid annuities.

"Upon the rendition of such judgment, and in conformity there-

with, the Secretary of the Interior is hereby directed to determine which of said Indians now living took part in said outbreak and to prepare a roll of the persons entitled to share in said judgment by placing on said roll the names of all living members of the said bands residing in the United States at the time of the passage of this act, excluding therefrom the names of those found to have participated in the outbreak; and he is directed to distribute the proceeds of such judgment, except as hereinafter provided, per capita to the person
11 borne on the said roll; and the court shall consider the evidence now on file in said cause in connection with such other evidence as may hereafter be adduced therein, and the said cause shall be advanced on the docket of the Court of Claims and of the Supreme Court of the United States if the same shall be appealed; and the court shall fix and determine, after full hearing, the amount that shall be deemed reasonable and just to be paid to attorneys for said Indians for services rendered or to be rendered in said cause, and the court may consider all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them in the matter of their claim, and the Secretary of the Treasury is hereby directed to pay the said sum of money to the said attorneys immediately upon the rendition of final judgment, out of the proceeds of said judgment, if any, when an appropriation for the payment thereof is made by Congress."

In other words, the court is to state the account between the United States and the claimant bands, charging the United States with the amount of the unpaid annuities, less any payments which are properly chargeable against said unpaid annuities, and to award judgment for the balance.

4. That by the terms of said treaty of July 23, 1851, as amended, the United States became indebted to your petitioners to the extent of fifty annual payments of $73,600 each, amounting, in the aggregate, to $3,680,000.

5. Following the outbreak referred to in the jurisdictional
12 act, Congress, on February 16, 1863, under the impression that all the Mississippi Sioux (including your petitioners) had been involved therein, passed an act (12 Stat. L., 652) declaring all the annuities of your petitioners, due them under previous treaties, to be forfeited to the United States.

6. At the date of the passage of said act (February 16, 1863) twelve of said installments of $73,600.00 each, amounting in the aggregate to $883,200.00, had been appropriated by Congress and $760,690.88 thereof paid to your petitioners, the balance of the amount so appropriated ($122,509.12) being retained by the United States.

7. On the 12th day of December, 1889, an agreement was entered into between the United States and that portion of the petitioning bands located upon the Lake Traverse Reservation in South Dakota for the cession of the surplus lands within said reservation.

By article 3 of said agreement the amount of the annuities due such of the scouts, or those who served in the Army during and subsequent to the outbreak of 1862, and their families, as resided upon the said reservation (estimated to be about one-fourth the whole amount of the annuities so confiscated) was restored to them, and the annuities continued at the rate of $18,400 per year to the date of the expiration of the said treaty of 1851, the total amount appropriated for this purpose being $581,978.37.

In addition to the foregoing, by the Indian appropriation acts of March 2, 1891 (26 Stats., 1037), March 3, 1893 (27 Stats., 624),
13 and March 2, 1895 (28 Stats., 889), sums aggregating $206,353.30 were appropriated to pay scouts and their families who were not parties to the agreement of 1889, the balance due them up to July 1, 1901, on account of said confiscated annuities. The said last-mentioned sum of $206,353.30 was distributed among 138 persons, 65 of whom were found to belong to the Medawakanton and Wahpakoota bands and 13 to the petitioning bands. The tribal identity of the other 60 persons sharing in this fund could not be determined.

Thus it appears that one-sixth of the identified Indians who participated in the distribution of this money were members of your petitioning bands. Adopting this same proportion as to the unidentified Indians, your petitioners therefore charge that they received but one-sixth of the said sum of $206,353.30, amounting to $34,392.22.

That by act of Congress of March 3, 1885 (23 Stat. L., 344), there was appropriated for payment to the creditors of the Sisseton and Wahpeton and Medawakanton and Wahpakoota bands of Sioux the sum of $100,000, which, by the terms of the said act, was to be charged against the unpaid annuities of the four bands. Half of this amount, being $50,000, was paid to the creditors of the claimant bands and is a proper charge against the unpaid balance of their annuities.

8. Your petitioners therefore charge that the proper and correct statement of the account between themselves and the United States, which the court is, by said jurisdictional act, authorized to state, is in words and figures following, to wit:

14 *The United States Dr. to the Sisseton and Wahpeton bands of Sioux.*

To 38 annuities of $73,600.00 each		$2,796,800.00
To annuities appropriated, but unpaid at the date of the forfeiture act		122,509.12
		$2,919,309.12
Deduct amount paid scouts and their families under the agreement of 1889	$581,978.37	
Deduct one-sixth amount paid to the scouts not parties to the agreement of 1889	34,392.22	
Deduct one-half amount appropriated by act of March 3, 1885	50,000.00	
		666,370.59
Balance due petitioners		$2,252,938.53

Wherefore your petitioners charge that the United States is indebted to them under the treaty of July 23, 1851, after deducting all just and proper charges against said unpaid annuities provided in said treaty, in the sum of $2,252,938.53.

In view of the premises, your petitioners pray the judgment of this honorable court and that they have judgment against the
15 United States in the said sum of two million two hundred fifty-two thousand nine hundred thirty-eight dollars and fifty-three cents.

CHARLES A. MAXWELL,
GEORGE S. CHASE,
Attorneys for Petitioners.

WILLIAM H. ROBESON,
MARION BUTLER,
J. M. VALE,
Of Counsel.

DISTRICT OF COLUMBIA, *ss:*

This day personally appeared before me Charles A. Maxwell, and in due form of law made oath that he is one of the attorneys for the petitioners; that he has read the foregoing amended petition, and that the statements therein contained are true to the best of his knowledge, information, and belief.

Subscribed and sworn to before me this day of January, 1907.

Notary Public in and for the District of Columbia.

16 *III.—Traverse.*

(Filed January 15, 1907.)

In the Court of Claims of the United States. December term, A. D. 1906.

THE SISSETON AND WAHPETON BANDS of Sioux Indians *vs.* THE UNITED STATES.	No. 22524.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

J. A. VAN ORSDEL,
Assistant Attorney-General.

17 *IV.—Argument and submission of case.*

On the 15th and 16th days of January, 1907, this cause came on to be heard, and was argued by Mr. William H. Robeson and Mr. Marion Butler for the claimants, and by Mr. George M. Anderson for the defendants, and submitted.

18 *V.—Findings of fact and conclusion of law and opinion of the court.*

(Filed May 13, 1907.)

THE SISSETON AND WAHPETON BANDS of Sioux Indians
vs.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court upon the evidence makes the following

FINDINGS OF FACT.

I.

By an act of Congress approved March 3, 1901, this court was empowered to—

"* * * hear, ascertain, and report to Congress what members of the Sisseton and Wahpeton bands of Dakota or Sioux Indians remained loyal to the Government of the United States, and were not directly or indirectly concerned in the depredations of certain bands of Sioux Indians named in the act of Congress approved February sixteenth, eighteen hundred and sixty-three, entitled 'An act for the relief of persons for damages sustained by reason of depredations and injuries by certain bands of Sioux Indians,' or other acts upon the subject; and to hear, ascertain, and report to Congress what annuities provided by the treaty with said bands of July twenty-third, eighteen hundred and fifty-one, would now be due the loyal members of said bands if the said act of Congress had not been passed," etc. (31 Stat. L., 1078.)

II.

Under the authority of said act a suit was instituted, heard, and determined, the court finding, in its opinion of January 18, 1904 (39 C. Cls. R., 172), that it was impossible from the evidence to determine what members of the claimant bands remained loyal to the United States during the hostilities in question.

III.

By an act of Congress, being public No. 258, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven," approved June 21, 1906, it is provided:

"That jurisdiction be, and hereby is, conferred upon the Court of Claims in Congressional case numbered twenty-two thousand five hundred and twenty-four, on file in said court, entitled 'The Sisseton and Wahpeton bands of Sioux Indians against the United States,' to further receive testimony, hear, determine, and render final judgment in said cause, for balance, if any is found due said bands, with right of appeal as in other cases, for any annuities which would be due to said bands of Indians under the treaty of July twenty-third, eighteen hundred and fifty-one (Tenth Statutes at Large, page nine hundred and forty-nine), as if the act of forfeiture of the annuities of said bands, approved February sixteenth, eighteen hundred and sixty-three, had not been passed; and to ascertain and set off against the amount found to be due to said Indians, if any, all payments or other provisions of every name or nature made to or for said bands by the United States, or to or for any members thereof since said act of forfeiture was passed, which are properly chargeable against said unpaid annuities.

"Upon the rendition of such judgment, and in conformity therewith, the Secretary of the Interior is hereby directed to determine which of said Indians now living took part in said outbreak and to prepare a roll of the persons entitled to share in said judgment by placing on said roll the names of all living members of the said bands residing in the United States at the time of the passage of this act, excluding therefrom the names of those found to have participated in the outbreak; and he is directed to distribute the proceeds of such judgment, except as hereinafter provided, per capita to the persons borne on the said roll; and the court shall consider the evidence now on file in said cause in connection with such other evidence as may hereafter be adduced therein, and the said cause shall be advanced on the docket of the Court of Claims and of the Supreme Court of the United States if the same shall be appealed; and the court shall fix and determine, after full hearing, the amount that shall be deemed reasonable and just to be paid to attorneys for said Indians for services rendered or to be rendered in said cause, and the court may consider all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them in the matter of their claim, and the Secretary of the Treasury is hereby directed to pay the said sum of money to the said attorneys immediately upon the rendition of final judgment, out of the proceeds of said judgment, if any, when an appropriation for the payment thereof is made by Congress."

IV.

By the treaty of July 23, 1851, between the United States and the Sisseton and Wahpeton bands of Sioux Indians, as amended (10 Stat., 949), the United States for lands ceded to them became indebted to the said Sisseton and Wahpeton bands of Sioux Indians to the extent of fifty annual payments of $73,600 each, amounting in the aggregate to $3,680,000, the last installment falling due July 1, 1902, and the further sum of $305,000, the payment of which was provided for in said treaty, making in all the sum of $3,985,000.

V.

In August, 1862, there was an outbreak of the Sioux Indians in Minnesota, consisting of the claimant Indians, known as the Upper Sioux, and the Medawakantons and Wahpakootas, known as the Lower Sioux, during which a large number of white settlers were massacred and a vast amount of property destroyed. As a consequence of this outbreak Congress passed the act of February 16, 1863 (12 Stat. L., 652), abrogating and annulling all treaties between said bands of Sioux and the United States, and declaring all lands and rights of occupancy within the State of Minnesota, and all annuities and claims heretofore granted them, to be forfeited to the United States, and provided for the payment of the damages incurred by the citizens in the outbreak out of the funds then in the hands of the Government belonging to said bands, and Congress also from time to time thereafter appropriated various other sums for the payment of said damages.

VI.

Congress has also from time to time, since said forfeiture act was passed, appropriated different sums of money for the support and maintenance of said Indians, sometimes providing that the same should be in lieu of their annuities and at other times making no reference to the same.

VII.

What number or proportion of the several bands of Sioux enrolled for payment as scouts and soldiers under the acts of March 3, 1891 (26 Stat. L., 156), March 3, 1893 (27 Stat. L., 624), and March 2, 1895 (28 Stat. L., 889), does not satisfactorily appear from the evidence.

VIII.

In accordance with the jurisdictional act hereinbefore set forth, the court states the following account between the Government and the claimant Indians, according to which it finds to be due to said claimants in accordance with the provisions of said act the sum of $788,971.43.

CREDITS.

By fifty installments of $73,600, treaty July 23, 1851		$3,680,000.00
By amount allowed to chiefs for removal and subsistence by said treaty		275,000.00
By amount allowed to chiefs for manual labor schools, etc		30,000.00
		3,985,000.00

DEBITS.

Item.		
1. To twelve installments of annuity appropriated under the treaty of 1851 (10 Stat. L., 949) prior to outbreak, less $104.66 returned to the Treasury ($883,200—104.66), $883,095.34, less $122,509.12 appropriated but not paid at date of forfeiture	$760,586.22	
(See p. 17, Senate Doc. 68, for various statutes.)		
21 2. To amount paid to the chiefs for removal and subsistence, and for manual labor schools under the treaty of 1851	305,000.00	
3. To amount appropriated and unpaid at date of forfeiture act, but forfeited and afterwards expended for damages growing out of the outbreak of 1862–3 (12 Stat. L., 652)	122,509.12	
4. To one-half of $100,000 advance annuity appropriated February 16, 1863 (12 Stat. L., 652)	50,000.00	
5. To one-half amount paid to scouts and soldiers of the four bands (26 Stat. L., 1038; 27 Stat. L., 624; 28 Stat. L., 889)	103,176.65	
6. To one-half amount expended for damages and for support, but not for removal	807,824.71	
(See p. 20, Senate Doc. 68, for various statutes.)		
7. To amount paid for support, etc., under the treaty of February 19, 1867	464,953.40	
(See p. 17, Senate Doc. 68, for various statutes making the appropriations.)		
8. To amounts paid under agreement of December 12, 1889	581,978.37	
		$3,196,028.47
Leaving a balance due of		$788,971.53

CONCLUSION OF LAW.

The claimants are entitled to a judgment for the sum of seven hundred and eighty-eight thousand nine hundred and seventy-one dollars and fifty-three cents ($788,971.53).

OPINION.

BARNEY, J., delivered the opinion of the court.

By act of Congress of March 3, 1901 (31 Stat., 1078), this court was empowered to hear, ascertain, and report to Congress what members of the Sisseton and Wahpeton bands of Dakota or Sioux Indians remained loyal to the Government of the United States and were not concerned in the depredations of certain bands of Sioux Indians named in the act of Congress February 16, 1863, *infra*, and to hear, ascertain, and report to Congress what annuities provided by the

treaty with said bands of July 23, 1851, *infra*, would now be due if the said act of Congress had not been passed. Under the authority of that act a petition was filed in this court, and upon trial it was decided that upon the evidence produced it was impossible to determine who the individual members were who remained loyal and did not participate in the depredations mentioned. (39 C. Cls. R., 172.)

By a provision contained in an act of Congress approved June 21, 1906, other and further jurisdiction upon the same matter was conferred upon this court, which provision is quoted in full in the findings; but the only part of the same, the effect of which is necessary for discussion in this opinion, is as follows:

"That jurisdiction be, and hereby is, conferred upon the Court of Claims in Congressional case numbered twenty-two thousand five hundred and twenty-four, on file in said court, entitled 'The Sisseton and Wahpeton bands of Sioux Indians against the United States,' to further receive testimony, hear, determine, and render final
22 judgment in said cause, for balance, if any is found due said bands, with right of appeal as in other cases, for any annuities which would be due to said bands of Indians under the treaty of July twenty-third, eighteen hundred and fifty-one (Tenth Statutes at Large, page nine hundred and forty-nine), as if the act of forfeiture of the annuities of said bands, approved February sixteenth, eighteen hundred and sixty-three, had not been passed; and to ascertain and set off against the amount found to be due to said Indians, if any, all payments or other provisions of every name or nature made to or for said bands by the United States, or to or for any members thereof, since said act of forfeiture was passed, which are properly chargeable against said unpaid annuities."

In order to better understand the subject of account between the claimant and the Government, we believe it to be necessary to give a brief history of the treaty and other relations between the parties during the time this account has been pending. And in so doing we shall only refer to such matters as are in dispute, and shall make no reference to other matters and appropriations about which there is no contention, excepting as the same may incidentally affect the matters under discussion.

In the year 1851 there were four bands of the Sioux Indians in Minnesota, divided into two groups: One generally known as the Lower Sioux, and consisting of the Medwakanton and Wahpakoota bands, and the other generally known as the Upper Sioux, consisting of the Sisseton and Wahpeton bands, who are the claimants in this case. In that year the United States entered into a treaty with the claimant Indians, by the terms of which they bound themselves to pay these Indians the sum of $305,000 and a yearly annuity of $73,600 for fifty years (10 Stat., 949). Thereafter annual appropriations were made by Congress for the payment of these installments, until the passage of the forfeiture act of 1863, hereinafter mentioned. In the year 1862 an outbreak of the Sioux Indians occurred, in which they committed terrible depredations and outrages upon the settlers

in Minnesota, constituting one of the darkest pages in the history of Indian warfare. It is undisputed that at least a part of the claimant Indians were engaged in this outbreak and massacre, together with the Lower Sioux, above mentioned. The Lower Sioux were, however, located nearer the white settlement, and for this reason probably a larger proportion of them participated in the outrages.

Because of these outrages committed by the Sioux Indians, Congress, on the 16th of February, 1863, passed an act by which the annuities provided for by the treaty of 1851 were forfeited to the Government; and in the same act a portion of these annuities then remaining in the Treasury unpaid, together with some annuities to become due under said treaty, was appropriated for the relief of the white settlers who had suffered from these depredations. (12 Stat. L., 652.)

Afterwards Congress recognizing the fact that all of these bands were not engaged in this outbreak, but, on the contrary, that some of them had assisted in suppressing it, from time to time appropriated moneys to members of the claimant bands, as well as members of the Lower Sioux, in payment for such assistance. The sums so paid to members of both the Lower Sioux and Upper Sioux amounted in the aggregate to $206,353.30. (26 Stat., 1038; 27 Stat., 624; 28 Stat., 889.) In these general appropriation acts it was mentioned that these payments were made as part of the annuities provided for in the treaty of 1851 notwithstanding the forfeiture.

In 1858 the claimant Indians concluded another treaty with the United States, containing the following provision:

"The Sisseton and Wahpeton bands of Dakota or Sioux Indians acknowledge their dependence on the Government of the United States, and do hereby pledge and bind themselves to preserve friendly relations with the citizens thereof, and to commit no injuries or depredations on their persons or property * * * ; but in case of any such injury or depredation, full compensation shall, as far as practicable, be made therefor out of their moneys in the hands of the United States, the amount in all cases to be determined by the Secretary of the Interior." (12 Stat. L., 1039.)

After the suppression of the outbreak of 1862, the United States removed from their then reservations at least some of the Sioux Indians who were engaged in it, although there appears to be some dispute as to whether all of the claimant Indians were so removed; but from the view we take of the case, as hereinafter more fully stated, that question is immaterial and is not here discussed.

The cost of such removal, together with the damages which were paid by the Government to the white sufferers in addition to the sum before mentioned, and sums appropriated from time to time for the support of the claimant Indians, including the Lower Sioux, amounted to $1,778,709.48. If we deduct from this amount the cost of removal, $163,060.06, the sum paid would be $1,615,649.42. (Senate Doc. No. 68, Fifty-fifth Congress, second session, 20.)

April 22, 1867, another treaty was concluded between the claimant Indians and the United States (15 Stat., 505–511), by which the Indians ceded to the United States "the right to construct wagon roads, railroads, mail stations, telegraph lines, and such other public improvements as the interests of the Government may require, over and across the lands claimed by said bands (including their reservation as hereinafter designated) over any route or routes that may be selected by authority of the Government, said lands claimed being bounded," etc. (Treaty, Article II.) Article III of the same treaty continues: "For and in consideration of the cession above mentioned, and in consideration of the faithful and important services said to have been rendered by the friendly bands of Sisseton and Wahpeton Sioux here represented, and also in consideration of the confiscation of all their annuities, reservations, and improvements, it is agreed," etc.; and in that and the two following articles setting apart to the Indians certain reservations therein described. Article VI of said treaty is as follows:

"And further, in consideration of the destitution of said bands of Sisseton and Wahpeton Sioux, parties hereto, resulting from the confiscation of their annuities and improvements, it is agreed that Congress will, in its own discretion, from time to time make such appropriations as may be deemed requisite to enable said Indians to return to an agricultural life under the system in operation on the Sioux Reservation in 1862, including, if thought advisable, the establishment and support of local and manual-labor schools; the employment of agricultural, mechanical, and other teachers; the open-
24 ing and improvement of individual farms, and generally such objects as Congress in its wisdom shall deem necessary to promote the agricultural improvement and civilization of said bands."

Under this treaty it is undisputed that Congress appropriated for and paid the claimant bands various sums, from time to time, in the aggregate amounting to $464,953.40. The treaty of 1858 provided that if the Senate should authorize the sale of certain lands belonging to the claimants, their debts should be paid out of a part of the proceeds of such sale; and such authorization being made and the lands sold, Congress appropriated the sum of $25,472.80 for said purpose.

Subsequently another treaty was concluded between the same parties, by which the claimants ceded to the United States the lands described in Article II of the treaty of 1867 (supra), and over which the United States then had the easement before mentioned, for the sum of $800,000, which was paid to them. (17 Stat., 281.) (18 Stat. L., 167.)

It will be remembered that by the treaty of 1851 the claimant bands were to receive an annuity of $73,600 for fifty years, which, if it had been fully paid, would have amounted in the aggregate to $3,680,000 on July 1, 1902, when the last payment would have become due. In addition to this the Government agreed to pay the sum of $305,000.

By the reinstatement of the provisions of that treaty there is placed to the credit of the claimants under the same the sum of $3,985,000, and as to this credit there is and can be no dispute.

The only contention in this case is as to the several sums which, in making up the account, are properly chargeable to the claimants under the act conferring jurisdiction upon this court for that purpose.

Before discussing the specific items which are so charged in the account we will briefly discuss the interpretation which we have given to the statutes bearing upon that subject.

The jurisdictional act (June 21, 1906), in its direction as to the several sums to be charged to the claimants, says: "And to ascertain and set off against the amount found to be due to the Indians, if any, all payments or other provisions, of every name or nature, made to or for said bands by the United States or to or for any members thereof, since said act of forfeiture was passed, which are properly chargeable against said unpaid annuities."

It is insisted by the claimants that under this provision "no moneys are properly chargeable against these unpaid annuities except such as have been paid in accordance with the provisions of that treaty (treaty of 1851), or which have, by act of Congress, been specifically charged against the same, by restoring the annuities to that extent;" while it seems to be insisted by the counsel for the defendants that the account between them and the claimants, so made up and submitted by the Secretary of the Interior, is final and binding upon this court.

It does not seem to us that either of these constructions of the jurisdictional act should prevail. If the claimants' contention is right there was no reason or necessity whatever for the transmission of the case to this court. It was a mere problem of addition and subtraction, which any schoolboy could solve in a very few minutes. About the credit there never was and never could be any dispute; and the several sums which had been paid directly under the treaty of 1851, and subsequently in terms charged against the claimants under the same, could have been easily ascertained, added up, and subtracted from the credit, and the task would have been done. On the other hand, if the account as made up by the Secretary is to control, that could easily have been obtained without any reference to this court.

This leads us to an examination of the provision of the jurisdictional act above quoted, which directs us as to the basis upon which this account shall be made. It is contended by the defendants that the words "which are properly chargeable against said unpaid annuities" is a limitation only upon such payments as have been made to individual members of the claimants and not to any payment which may have been made to the whole tribe, while it is insisted by the claimants that these words are a limitation upon all payment made, either to individual members or the tribe collectively.

It must be admitted that accepting either construction and taking the whole provision together there is some confusion and perhaps inconsistency in it. First, we are told to set off "all payments or other provisions of every name and nature made to or for said bands," and afterwards only such "as are properly chargeable against said unpaid annuities." From the view, however, which we take of the whole provision we think it makes but little or no difference as to which of the above constructions is given to it.

It is an elementary principle in the construction of statutes that force and effect should be given to all of the language used, if that can be done with reasonable consistency. Taking the provision as a whole we have no doubt it was the intention of Congress that this court should do something more than look up the several appropriation acts and ascertain the sum total of the appropriations which have been made to the claimants in terms, in payment of the annuities provided by the treaty of 1851; that we should go further and examine "all payments or other provisions of every name and nature" made to them, and from the nature of the same and the circumstances under which they were made determine whether they are "properly chargeable against such unpaid annuities." And we believe this intention is a fair and reasonable inference from the language of the act.

Otherwise, why the passage of the act at all, and why the industrious use of such language as "all payments or other provisions of every name and nature" and "properly chargeable?"

In the light of this construction of the jurisdictional act, we have made up the account as stated in the findings and will briefly give our reasons for the several charges against the claimants.

Item 1. $760,586.22.

This item is made up by the appropriation for the first 12 installments under the treaty of 1851, less $122,404.46, the amount on hand and unpaid at the time of the passage of the forfeiture act of 1863, and also less $104.66 returned to the Treasury. This charge against the claimant is undisputed.

Item 2. $305,000.

This item is the sum which was provided for in the treaty of 1851, to be paid for various purposes, and is also undisputed.

26 Items 3 and 4. $122,509.12 and $50,000.

These two items will be considered together, as they both depend upon the same state of facts as well as the same principles of construction. The forfeiture act of 1863 (12 Stat. L., 652) appropriated two-thirds of the above sum of $122,404.46, and also $100,000 of

the annuities thereafter to become due under the treaty of 1851, $50,000 of which would be the share of advance annuities of the claimants. Of this amount, $120,220.24 was placed in the hands of the commissioners provided for in that act and charged with the distribution of the same among the white sufferers of the outbreak of 1862, and was expended for that purpose. The balance appears to have been disbursed in the payment for supplies for the claimants and for agents and school-teachers for them both before and subsequent to the outbreak. (Senate Doc. 68, supra, pp. 4, 5.)

It would not take a very elastic construction of the jurisdictional act in this case to charge the claimants with the sum so expended if there was no other treaty to be considered than that of 1851, for the damages were caused by their own devilish acts and that of their brethren, and there would seem to be no good reason why they should not pay for them. But when we examine the treaty of 1858 (12 Stat. L., 1039) all doubt appears to be removed. By the terms of the latter treaty, supra, the claimant Indians expressly agreed to pay these damages "out of their moneys in the hands of the United States." We have no hesitancy in charging these two items to the claimants.

Item 5. $103,176.65.

It is undisputed that Congress from time to time appropriated double the above amount ($206,353.30) for the payment of the "scouts and soldiers of the Sisseton, Wahpeton, Medwakanton, and Wahpakoota bands of Sioux who were enrolled and entered into the military service of the United States," etc., and that that amount is specifically made chargeable against the annuities of the four bands mentioned.

The several appropriation acts show that this gross sum of $206,353.30 was appropriated for the scouts of the four bands of Sioux mentioned collectively, and as there is no reliable evidence before this court showing with any degree of certainty how much of this amount went to each band, we think the just way of settling the matter is to charge one-half of this amount to the Lower Sioux and one-half to the claimants.

Item 6. $807,824.71.

This is one-half of the amount of the several sums which have been appropriated by Congress at different times for the payment of damages to the settlers growing out of the outbreak of 1862 and other sums appropriated for the support of the four bands of Indians before mentioned. Some of these appropriations are in terms made chargeable to the annuities of the claimants (see 23 Stat. L., 344), while in other instances no mention of annuities is made. It is undisputed that double the above amount was appropriated and paid either (1) for damages to settlers growing out of the outbreak of 1862, or (2) for support of these four bands of Indians since the for-

feiture act of 1863. This being the case, we think that the several sums in this item for damages should be charged to the claim-
27 ants in making up this account, under the treaty of 1858, supra, and that the sums appropriated for support are "properly chargeable" against them as being in fact, if not in terms, in lieu of their annuities under the treaty of 1851.

In connection with the above sum the Secretary of the Interior has charged the claimants with $81,530.03, that sum being one-half of the amount claimed to have been expended for the removal of the Lower and Upper Sioux to new homes after 1862, and the defendants insist that that is a proper charge in this account. It is contended by the claimants, as before stated, that they never were so removed, and that if chargeable to any Indians it should be charged to the Lower Sioux. According to our construction of the law applicable to this case we do not think this sum of $81,530.03 is chargeable to the claimants in making up this account in any event. It was not for damages, and so did not come under the treaty of 1858; it was not for support, and so did not become in any way a proper charge under our interpretation of the jurisdictional act, and hence was excluded from this account. In this connection we might add that it seems always to have been the policy of the United States to encourage the removal of the Indians westward and to pay the expenses of such removal. (Cherokee Indians v. The United States, 40 C. Cls. R., 252,341.)

Item 7. $464,953.40.

This item is made up of the several sums which have been paid to the claimants under the treaty of 1867 (15 Stat. L., 506). By this treaty, as already stated, the claimants ceded to the United States a right of way for railroads, telegraph lines, etc., over their lands, in consideration of which the United States confirmed to them certain reservations; and Article VI of said treaty is as follows:

"And further, in consideration of the destitution of said bands of Sisseton and Wahpeton Sioux, parties hereto, resulting from the confiscation of their annuities and improvements, it is agreed that Congress will, in its own discretion, from time to time make such appropriations as may be deemed requisite to enable said Indians to return to an agricultural life under the system in operation on the Sioux Reservation in 1862, including, if thought advisable, the establishment and support of local and manual-labor schools; the employment of agricultural, mechanical, and other teachers; the opening and improvement of individual farms, and generally such objects as Congress in its wisdom shall deem necessary to promote the agricultural improvement and civilization of said bands."

It should be remarked that Article VI above was added by the Senate as an amendment to the treaty as completed by the Commissioner, and that the original treaty made no reference to the matters therein mentioned as to the consideration, etc.

The above amendment is a clear indication to our minds that the Senate thereby intended that the sums so agreed to be paid should be in lieu of the annuities "confiscated" by the treaty of 1851. This opinion is strengthened by the fact that by a subsequent treaty, June 7, 1872, the United States paid the claimants $800,000 for a cession of the lands over which the right of way was given. (17 Stat. L., 281.)

28 For the reasons given, we have considered this item of $464,953.40 a proper charge against the claimants within the jurisdictional act.

Item 8. $581,978.37.

This item is made up of appropriations made by Congress for the claimant under Article III of the treaty of 1889 (26 Stat., 1037), and is in terms in lieu of the annuities provided for by the treaty of 1851. This item is admitted by the claimants to be a correct charge against them in this account, and hence needs no discussion.

The defendants have contended that we should further charge the claimants with an item of $25,472.30, which was paid pursuant to the treaty of 1858, supra. Article II of said treaty provided for the submission to the Senate of the question of the title of the claimants to certain lands, but in case it decided that they had such title it might authorize the sale of the same for their benefit. Article III of the same treaty provided that if the Senate should so authorize the sale of said lands, or should prescribe an amount to be paid to the claimants for their interest in said treaty, provision should be made by which their chiefs might authorize to be paid, "out of the proceeds of said tract," such sums as might be found necessary to pay their just debts, not exceeding $70,000, and it appears that said sum of $25,472.30 was paid to the claimants as the proceeds of said lands. This appears to us to be a transaction entirely independent of the account under consideration, and in no way connected with the annuities provided for by the treaty of 1851, and hence not a proper charge against the claimants in this case.

We have thus considered all of the several items which are in dispute in this case, and have reached the conclusion that the claimants are entitled to a judgment of $788,971.53, and it is so ordered.

By the Court.

29 *VI.—Final judgment of the court.*

The Sisseton and Wahpeton Bands of Sioux Indians *vs.* United States.	No. 22524.

At a Court of Claims held in the city of Washington on the 13th day of May, 1907, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find in favor of the claimants, and do order, adjudge, and decree that the said The

Sisseton and Wahpeton Bands of Sioux Indians do have and recover of and from the United States the sum of seven hundred and eighty-eight thousand nine hundred and seventy-one dollars and fifty-three cents ($788,971.53).

BY THE COURT.

30 *VII.—Application of claimants for, and allowance of, appeal.*

THE SISSETON AND WAHPETON Bands of Sioux Indians *vs.* THE UNITED STATES. } No. 22524.

Come the claimants by attorney and in open court pray the allowance of an appeal to the Supreme Court of the United States from the judgment entered in this case on Monday, May 13, 1907.

C. A. MAXWELL,
GEO. S. CHASE,
Attorneys of Record.

WM. H. ROBESON,
MARION BUTLER,
J. M. VALE,
Of Counsel.

Filed May 15, 1907.

Ordered, That the above application for appeal be allowed as prayed for.

May 15, 1907.

BY THE COURT.

31 *VIII.—Application of defendants for, and allowance of, appeal.*

THE SISSETON AND WAHPETON Bands of Sioux Indians *vs.* THE UNITED STATES. } No. 22524.

From the judgment rendered in the above-entitled cause on the 13th day of May, 1907, in favor of claimant, the defendants, by their attorney-general, on the 15th day of May, 1907, make application for, and give notice of, an appeal to the Supreme Court of the United States.

J. A. VAN ORSDEL,
Assistant Attorney-General.

Filed May 15, 1907.

Ordered, That the above application for appeal be allowed as prayed for.

May 15, 1907.

BY THE COURT.

32 *IX.—Certificate.*

Court of Claims.

THE SISSETON AND WAHPETON Bands of Sioux Indians *vs.* THE UNITED STATES. } No. 22524.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law; of the opinion of the court; of the final judgment of the court; of the application of the claimants for, and allowance of, appeal to the Supreme Court of the United States, and of the application of the defendants for, and allowance of, appeal to the said Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 25th day of May, 1907.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

33 (Indorsement on cover:) File Nos. 20740 and 20741, Court of Claims. Term No. 338. The United States, appellant, vs. The Sisseton and Wahpeton Bands of Sioux Indians. File No. 20741. Term No. 339. The Sisseton and Wahpeton Bands of Sioux Indians, appellants, vs. The United States. Filed May 25th, 1907. File Nos. 20740 and 20741.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

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No. ~~776.~~
339.

THE SISSETON AND WAHPETON BANDS OF SIOUX INDIANS

versus

THE UNITED STATES

MOTION TO ADVANCE

CHARLES A. MAXWELL
GEORGE S. CHASE
Attorneys of Record

W. H. ROBESON
MARION BUTLER
J. M. VALE
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

THE SISSETON AND WAHPETON BANDS OF SIOUX INDIANS

versus

THE UNITED STATES

No.

MOTION TO ADVANCE

Comes now appellants, The Sisseton and Wahpeton Bands of Sioux Indians, and move the Court to advance this cause for that the jurisdictional act of Congress, approved June 21, 1906, provides as follows:

"And the said cause shall be advanced on the docket of the Court of Claims and of the Supreme Court of the United States, if the same shall be appealed."

CHARLES A. MAXWELL
GEORGE S. CHASE
Attorneys of Record

W. H. ROBESON
MARION BUTLER
J. M. VALE
Of Counsel.

, I have no objection to the advancement of this case to any date agreeable to the Court subsequent to November 1, 1907.

J. A. MacDonald.
Assistant Attorney-Gener

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE UNITED STATES
v.
THE SISSETON AND WAHPETON BANDS of Sioux Indians. } No. 338.

THE SISSETON AND WAHPETON BANDS of Sioux Indians
v.
THE UNITED STATES. } No. 339.

APPEALS FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This suit for $2,253,043.20 was instituted by the Sisseton and Wahpeton bands of Sioux Indians under two special acts of Congress, for the recovery of the balance of certain annuities pledged to them by the United States as a consideration for the cession of their lands in Minnesota in 1851.

By the treaty of July 23, 1851 (10 Stat., 949), known as the "Treaty of Traverse des Sioux," the Sisseton and Wahpeton Indians ceded to the United States their lands in the State of Minnesota.

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By Article I of the treaty the Sisseton and Wahpeton Indians bound themselves to maintain perpetual peace with the Government of the United States.

By Article III a reservation for the said Indians was set apart embracing—

> All that tract of country on either side of the Minnesota River from the western boundary of the lands herein ceded east to the Tchaytam-bay River on the north, and to the Yellow Medicine River on the south side, to extend, on each side, a distance of not less than ten miles from the general course of said river.

By Article IV the United States, in consideration of the cession of their lands, agreed to pay to said Indians the sum of $1,665,000 in the following manner: First, $275,000 to the chiefs for the removal of the Indians to their reservation and subsistence for the first year thereafter without expense to the Government; second, $30,000 for manual-labor schools, erection of mills and blacksmith shops, opening farms, fencing and breaking land, and for other beneficial objects.

After the payment of the $305,000 for the purposes set out, the balance of the purchase money, $1,360,000, to remain in trust, in the Treasury of the United States, at 5 per cent interest, amounting to $68,000 per annum, to be paid annually for a period of fifty years, commencing July 1, 1852, and to "be in full payment of said balance, principal and interest."

That the interest should be applied annually as follows: (1) $12,000 for a general agricultural im-

provement and civilization fund; (2) $6,000 for educational purposes; (3) $10,000 for the purchase of goods and provisions; (4) $40,000 for a money annuity.

The Senate in amending the treaty struck out the third article, providing for a reservation along the Minnesota River, and added a supplemental article, providing, first, for the payment to the Indians for their lands embraced in the reservation as originally agreed upon, and, second, for "setting apart by appropriate landmarks and boundaries such tracts of country without the limits of the cession made by the first article of the treaty as may be satisfactory for their future occupancy and home."

No other reservation was provided for the Indians in accordance with the amendment, but they were allowed to remain upon the reservation described in the original third article of the treaty, and these lands were confirmed to them as their permanent reservation by the act of July 31, 1854. (10 Stat., 362.)

However, before the land was confirmed to the Indians, it was surveyed and found to contain 1,120,000 acres, and Congress, by the act of August 30, 1852 (10 Stat., 51, 52), added $112,000, the agreed consideration for the reservation at 10 cents an acre, and this was added to the trust fund of $1,360,000, and on this also interest at the rate of 5 per cent was to be paid, the amount of $112,000 being "in lieu of the reservation set apart in the original third article of the treaty." By this increase

to the trust fund $5,600 was added to the yearly interest, which now amounted to $73,600 per annum, aggregating for the period of fifty years, from July 1, 1852, to July 1, 1902, the sum of $3,680,000.

By Article II of the treaty of June 19, 1858 (12 Stat., 1037), that part of the land reserved to the Indians in the original third article of the treaty of 1851, lying on the north side of the Minnesota River, was ceded to the United States, and the question of the title to said lands and the consideration for the same was left to the Senate for settlement.

The Senate by resolution of June 27, 1860 (12 Stat., 1042), determined that the Indians had a valid title to said lands, and that they should "be allowed the sum of 30 cents per acre for the lands contained in that portion thereof lying on the north side of the Minnesota River."

These lands were subsequently ascertained to contain 569,600 acres, and an appropriation for the payment therefor at the rate of 30 cents an acre, amounting to $170,880, was made by the act of March 2, 1861. (12 Stat., 237.)

In accordance with the provision of the third article of the treaty of 1858, a part of this fund was used to pay the "debts and obligations" of the Indians, and the balance of the fund was used to provide goods to be "taken by the chiefs and headmen to the said bands on their return." The balance of the debts and obligations of the Indians, amounting to $25,472.30, was paid out of an appropriation of

$70,000 made by the act of May 16, 1874 (18 Stat., 47; see also Senate Doc. No. 68, 55th Cong., 2nd sess., pp. 5 and 6, and statement No. 2, p. 17, Appendix A).

The treaty of 1858 also contained the following provision:

> ART. 6. The Sisseton and Wahpeton bands of Dakota or Sioux Indians acknowledge their dependence on the Government of the United States, and do hereby pledge and bind themselves to preserve friendly relations with the citizens thereof, and to commit no injuries or depredations on their persons or property; * * * but in case of any such injury or depredation *full compensation shall, as far as practicable, be made therefor out of their moneys in the hands of the United States, the amount in all cases to be determined by the Secretary of the Interior.* (12 Stat. L., 1039.)

The first installment of the annual interest of $73,600, and $275,000 for payment to the chiefs, and $30,000 for manual labor schools, etc., under the treaty of 1851, were appropriated by the act of August 30, 1852 (10 Stat., 51–52).

After 12 installments of the annual interest payments of $73,600 had been appropriated, the great outbreak of the Sisseton and Wahpeton Indians, known as the "Upper Bands," and the Medawakanton and Wahpakoota Indians, known as the "Lower Bands," occurred in August, 1862, during which a large number of white settlers in Minnesota, Iowa, and Dakota were murdered, and a vast amount of property belonging to them was destroyed by these Indians,

aggregating over one million and a half of dollars, and the insurrection was not completely subdued until several years afterwards, at a cost of many millions of dollars to the Government of the United States.

At the commencement of the outbreak the claimants were living on the remainder of their reservation in Minnesota, lying on the south side of the Minnesota River, 10 miles wide, extending from the Yellow Medicine River westwardly to the Dakota line; and the Medawakanton and Wahpakoota Indians were living on the remainder of their reservation, also on the south side of the Minnesota River, and extending eastwardly from the Yellow Medicine River.

At this time there had been paid, under the treaty of 1851, to the chiefs, and expended for manual labor schools, etc., the sum of $305,000, and 12 installments of the annual interest had been appropriated, all of which had been expended except the sum of $122,404.46, which remained in the hands of the Government.

On February 16, 1863 (12 Stat., 652), an act was passed by Congress entitled "*An act for the relief of persons for damages sustained by reason of depredations and injuries by certain bands of Sioux Indians,*" which recited the fact that the United States had heretofore become bound by treaty stipulations to pay to the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of Sioux Indians large sums of money and annuities, the greater portion of which remained unpaid according to the terms of the treaty stipulations, and also the fact that during the year the

aforesaid bands had made "an unprovoked, aggressive, and most savage war upon the United States, and massacred a large number of men, women, and children within the State of Minnesota, and destroyed and damaged a large amount of property, and thereby have forfeited all just claim to the said moneys and annuities to the United States; and whereas it is just and equitable that the persons whose property has been destroyed or damaged by the said Indians, or destroyed or damaged by the troops of the United States in said war, should be indemnified in whole or in part out of the indebtedness and annuities so forfeited as aforesaid."

The act then declared all treaties heretofore made and entered into with said Indians "to be abrogated and annulled, so far as said treaties or any of them purport to impose any future obligation on the United States, and all lands and rights of occupancy within the State of Minnesota, and all annuities and claims heretofore accorded to said Indians, or any of them, to be forfeited to the United States."

Section 2 of the act provided that two-thirds of the balance remaining unexpended of the annuities, not exceeding $100,000, and the further sum of $100,000, being two-thirds of the annuities becoming due and payable to said Indians during the next fiscal year (1864), "is hereby appropriated, and shall be paid from the Treasury of the United States, out of any moneys not otherwise appropriated, to the commissioners hereinafter provided for, to be apportioned by them among the heads of families, or, in

case of their decease, among the surviving members of families of the State of Minnesota who suffered damage by the depredations of the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of Sioux Indians, or by the troops of the United States in the late Indian war in the State of Minnesota," etc.

Section 3 provided for the appointment of three commissioners to assess the damages and set out their duties, powers, and procedure.

On March 3, 1863, a supplementary act was passed by Congress extending the provisions of the act of February 16, 1863 (12 Stat., 803, 804), to the payment for damages sustained by persons in the State of Iowa and the Territory of Dakota.

The amount of the 12 appropriations for the claimants remaining unexpended at the beginning of the outbreak, $122,404.46, and their share of the advance annuity for 1864, $50,000, were expended for damages and indebtedness incurred for goods, supplies, and material furnished for the use of the claimants prior to the outbreak and for salaries of agents and school employees prior and subsequent thereto. (Senate Doc. No. 68, pp. 4, 5; Statement 1, p. 17.)

An act was passed on March 3, 1863 (12 Stat., 819), "for the removal of the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of Sioux or Dakota Indians, and for the disposition of their lands in Minnesota and Dakota," section 1 of which provided for a reservation for the Indians "outside of the limits of any State."

Section 2 provided for the survey of the reservations, the appraisement of the subdivisions of their lands, and for the payment of the same upon preemption.

Section 3 provided for the manner of preemption and sale.

Section 4 provided that the money derived from the sale of their lands should be expended for the benefit of the Indians in their new homes, in establishing them in agricultural pursuits.

Section 5 provided that the money should be annually appropriated for the benefit of the said Indians, and expended in such manner as would, in the judgment of the Secretary of the Interior, enable them to sustain themselves without the aid of the Government; "but no portion of said appropriations shall be paid in money to said Indians."

The claimants, in accordance with the provisions of the above act, were removed from their reservation in Minnesota, which was sold, and the proceeds, amounting to $944,810.78, were expended for their benefit. (Senate Doc., No. 68, pp. 10, 11; Statement No. 9, p. 19.)

Prior to the passage of the above act for the removal of the claimants and the "Lower Bands" an item was inserted in the appropriation act for the Indian Department, March 3, 1863, appropriating $50,016.66 to enable the President to cause the removal of the claimants and the Medawakantons and Wahpakootas beyond the limits of any State, and for the purpose of establishing, maintaining,

and subsisting them in their new homes. On May 28, 1864 (13 Stat., pp. 92 and 93), Congress passed an act appropriating $928,411 for the payment of awards made by the commission appointed under the act of February 16, 1863, the "forfeiture act," for damages committed by the claimants, and the Medawakanton and Wahpakoota Indians, and also appropriated $241,963 for the payment of the claims of certain designated persons, the amounts to be ascertained and paid by the Secretary of the Interior. In the appropriation act of June 25, 1864 (13 Stat., at p. 172), an appropriation was made for "deficiencies in subsistence and expenses of removal and support of the Sioux and Winnebago Indians of Minnesota, during the fiscal year ending June thirtieth, eighteen hundred and sixty-four, one hundred thirty-seven thousand two hundred and ninety-three dollars and forty cents," of which $113,043.40 was expended for the claimants and the "Lower Bands."

By the same act (p. 180) an appropriation of $100,000 was made for the same Indians for "subsistence and clothing and general incidental expenses" at their new homes, and appropriations were made of the same amount, $100,000 each, for the same purpose by the acts of March 3, 1865 (13 Stat., 559), July 26, 1866 (14 Stat., 279), March 2, 1867 (14 Stat., 514), and by the act of June 22, 1874 (18 Stat., 141), $13,942.03. By the act of March 3, 1877 (19 Stat., 549), $2,283.92 were appropriated for the payment of damages sustained by a certain Hans C.

Peterson. By the act of March 3, 1885 (23 Stat., 344), $100,000 was appropriated for the payment of amounts due licensed traders, citizens of the United States, for supplies furnished to the claimants and the "Lower Bands" subsequent to June 1, 1861, and prior to the outbreak and massacre by said Indians in August, 1862. The act then sets out the fact that the commissioners appointed under the "forfeiture act" of February 16, 1863, had no authority to make an award for said claimants and provided in the same section of the act "That said sum shall be charged to the unpaid annuities stipulated to be paid to the said Sioux Indians under treaties, but abrogated and annulled by the act approved February 16, 1863."

All of the above appropriations were expended for the benefit of the claimants and the "Lower Bands," and are set out in Senate Document No. 68, statement No. 10, page 20, and one-half of the total amount expended, $1,778,709.48, was charged to the claimants, and the other half to the Medawakanton and Wahpakoota bands (Senate Doc. 68, p. 11).

After the removal of the Sisseton and Wahpeton bands from their reservation in the State of Minnesota, they laid claim to a large tract of land in that part of the Territory of Dakota which is now the State of North Dakota. They had never prior to this time asserted any claim to these lands in any previous treaty or agreement (Senate Doc. 68, p. 14). A commission appointed in 1866 to investigate the title of the claimants to these lands in reporting,

September 4, 1866, to the Commissioner of Indian Affairs the reasons for the failure to secure the agreement of the Sisseton and Wahpeton Indians, whom they called Santee-Sioux, to the treaty, stated that in their opinion the title of the claimants to the lands in question was doubtful, and that they only endeavored to secure their agreement to the treaty in order to quiet the title and save trouble in the future. (Rep. of Com. Ind. Affairs, 1866, p. 240.)

A treaty was afterwards negotiated with the Sisseton and Wahpeton bands on February 19, 1867 (15 Stat., 505), by article 2 of which the right to construct wagon roads, railroads, mail stations, telegraph lines, and other public improvements was granted to the United States over and across the lands claimed by them in the Territory of Dakota; and out of these lands, by articles 3 and 4, two reservations were confirmed to the claimants, the Lake Traverse and Devils Lake reservations.

On April 15, 1867, the treaty was ratified by the Senate (15 Stat., 609), and all articles from and including article 6 were stricken out and new provisions inserted in place thereof. The first inserted article (article 6) reads as follows:

> And further, *in consideration of the destitution* of said bands of Sisseton and Wahpeton Sioux, parties hereto, *resulting from the confiscation of their annuities and improvements*, it is *agreed* that Congress will, in its *own discretion*, from time to time make such appropriations as may be deemed requisite to enable

> said Indians to return to an agricultural life under the system in operation on the Sioux Reservation in 1862, including, if thought advisable, the establishment and support of local and manual-labor schools; the employment of agricultural, mechanical, and other teachers; the opening and improvement of individual farms, and generally such objects as Congress in its wisdom shall deem necessary to promote the agricultural improvement and civilization of said bands.

Under the provisions of the treaty of 1867, appropriations were made for the claimants by the acts of June 27, 1868 (15 Stat., 217), March 3, 1869 (15 Stat., 315), April 20, 1870 (16 Stat., 88), July 15, 1870 (16 Stat., 354), March 3, 1871 (16 Stat., 563), and May 29, 1872 (17 Stat., 183), for agricultural supplies, goods and provisions, payment of employees, instruction in agricultural pursuits, education of children, medicines, and medical attendance; and appropriations were made by the acts of March 3, 1883 (22 Stat., 447), July 4, 1884 (23 Stat., 91), March 3, 1885 (23 Stat., 378), March 15, 1886 (24 Stat., 42), March 2, 1887 (24 Stat., 462), June 29, 1888 (25 Stat., 231), for the support and civilization of the claimants. By the acts of March 2, 1899 (25 Stat., 996), August 19, 1890 (26 Stat., 352), and March 3, 1891 (26 Stat., 1095), appropriations were made for the support and civilization of the claimants and the payment of employees. By the act of February 27, 1890 (26 Stat., 15), appropriation was made for seed, subsistence, clothing, etc., for the claimants. Appropriation

was made by the acts of July 13, 1892 (27 Stat., 135), March 3, 1893 (27 Stat., 628), and August 15, 1894 (28 Stat., 303), for the support and civilization of the claimants and pay of employees. By the acts of March 2, 1895 (28 Stat., 892), June 10, 1896 (29 Stat., 338), and June 7, 1897 (30 Stat., 78), appropriation was made for the support and civilization of the claimants, pay of employees, and for the purchase of seed for planting. The total appropriations made under the treaty of 1867 aggregate $517,457.25. Deducting an overcharge under the third article of the agreement of December 12, 1889, of $49,666.07, and the sums of $1,049.89 and $1,787.89, returned to the Treasury, the amount expended under the different acts aggregate the sum of $464,953.40. (Senate Doc. 68, pp. 6 and 7; and Statements 3 and 4, pp. 17 and 18.)

By the act of June 7, 1872 (17 Stat., 281), the Secretary of the Interior was directed to examine and report to Congress the title of the claimants to the lands described in article 2 of the treaty of February 19, 1867, and what compensation, if any, ought in equity and justice to be made to them for the extinguishment of whatever title they might possess to said lands. In pursuance of the act a commission was appointed by the Secretary of the Interior, with instructions to make a full investigation of the Indian title, and if found valid to negotiate for the relinquishment of the lands upon terms favorable to the Government and just to the Indians. On October 3, 1872, the commission reported to the

Secretary of the Interior the result of their investigations and findings, and recommended the payment of $800,000 for the lands, in ten equal installments, without interest, and entered into an agreement with the claimants, dated September 20, 1872, by which all of the lands described in the second article of the treaty of 1867, except the Lake Traverse and Devils Lake reservations, were ceded to the Government. This treaty was confirmed by the act of Congress approved February 14, 1873 (17 Stat., 456), and the first installment of $80,000 was appropriated by the same act. The remaining installments were made thereafter annually, the tenth and last installment being appropriated May 17, 1882 (22 Stat., 88; Sen. Doc. 68, pp. 7, 8, 14; Statement No. 5, p. 18). The commission stated that the consideration was "larger than ought to be allowed in equity" in view of the possessory rights ceded by the treaty of 1867; and also stated that the Chippewa Indians claimed a portion of the northern part of the lands in question. (Report of the Secretary of the Interior, 42d Cong., 3d sess., 1872, pp. 505 and 506.)

By the agreement of December 12, 1889, ratified by the act of Congress approved March 3, 1891 (26 Stat., 1035), articles 1 and 2, the claimants ceded all of the unallotted lands in their reservation in North and South Dakota to the United States for $2.50 per acre, the cession to take effect upon the payment of certain money to those members of the bands who had served against their own people in the armies of

the United States during the outbreak. By article 3 provision was made for the payment to those members of the bands who served in the armies of the United States against their own people when at war with the United States, and their families and descendants, the amount found to be due under the provisions of the fourth article of the treaty of July 23, 1851, of which they were deprived by the "forfeiture act" of 1863, upon the basis of $18,400 per annum from July 1, 1862, to July 1, 1901, when the provisions of the treaty of 1851 would have expired, less their portion of certain appropriations made for their benefit since 1852. The amount paid under this article to the claimants was $581,978.37. (Senate Doc. 68, pp. 8, 9, 10; see also statement No. 6, p. 18. Since this statement was rendered the three remaining installments, $55,200, have also been paid to the claimants, making the amount above stated.)

For the unallotted lands of the Lake Traverse Reservation ceded to the Government by articles 1 and 2 of the agreement of December 12, 1889, the claimants received the sum of $1,522,154.15. (Statement No. 8, Senate Doc. 68, p. 19.)

While it is not contended that the purchase money for the unallotted lands of the Lake Traverse Reservation is a proper charge against the forfeited annuities of the claimants, the amount is set out as showing the increase in value of the lands due to the settlement of the country in North Dakota opened up by their sale to the Government.

By section 27 of the act approving the agreement of 1889 (26 Stat., pp. 1038, 1039) appropriation was made for carrying out the provisions of the agreement and for the payment of the money to the scouts and soldiers of the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of Sioux Indians who engaged in the service of the United States in the suppression of the Indian outbreak of 1862, and provided that the payment to them, their families and descendants, "shall be deemed a full settlement of all claims they may have for unpaid annuities under any and all treaties or acts of Congress up to the 30th day of June, 1890." All of the money provided under this agreement was paid to the scouts and soldiers of the Sisseton and Wahpeton bands, and that fact is not contested by the claimants.

By the acts of March 3, 1891 (26 Stat., 1035), March 3, 1893 (27 Stat., 624), and March 2, 1895 (28 Stat., 889), appropriations were made for the payment to scouts and soldiers of the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of Indians and the descendants of those deceased, not including those who were parties to the agreement of 1889, to be deemed a full settlement of all unpaid annuities up to June 30, 1890, aggregating $206,353.30. The accounts of the Interior Department show that all of these appropriations were paid to members of the claimant bands, and all have been charged to them by the Department. (See Senate Doc. 68, Statement 7, p. 19; and the report from the Interior

Department, dated February 4, 1907, and appendix to this brief, *post*, pp. 27 and 28.)

The claim of the Sisseton and Wahpeton Indians for the balance of their unpaid annuities was referred to the Court of Claims as a Congressional case by an item inserted in the Indian appropriation act of March 3, 1901 (31 Stat., 1078), which reads as follows:

> That full jurisdiction is hereby conferred upon the Court of Claims to hear, ascertain, and report to Congress what members of the Sisseton and Wahpeton bands of Dakota or Sioux Indians remained loyal to the Government of the United States, and were not directly or indirectly concerned in the depredations of certain bands of Sioux Indians named in the act of Congress approved February sixteenth, eighteen hundred and sixty-three, entitled "An act for the relief of persons for damages sustained by reason of depredations and injuries by certain bands of Sioux Indians," or other acts upon the subject; and to hear, ascertain, and report to Congress what annuities provided by the treaty with said bands of July twenty-third, eighteen hundred and fifty-one, would now be due to the loyal members of said bands if the said act of Congress had not been passed. The court is further authorized to further consider, ascertain, and report to Congress what lands, appropriations, payments, gratuities, or other provisions have been made to or for said bands or to any of the members thereof since said act of forfeiture was passed. Proceed-

> ings shall be commenced by petition, verified by the attorney for said Indians who may appear for and on their behalf, and said case shall have preference and be advanced on the docket of the said court; and if said court shall find that said bands preserved their loyalty to the United States they shall ascertain and state the amount that would be due to said Indians on account of said annuities had said act of Congress of February sixteenth, eighteen hundred and sixty-three, not been passed, stating in connection therewith what credits shall be charged against said annuities on account of the lands, appropriations, payments, gratuities, or other provisions as hereinbefore stated.

Under the authority contained in the above act a petition was filed in the Court of Claims, and the case having been brought to trial the court decided that upon the evidence produced it was impossible to determine who the individual members were who remained loyal and did not participate in the depredations referred to in the act, and dismissed the petition. A motion for a new trial was filed by the claimants, and while the same was pending an item was inserted in the Indian appropriation act approved June 21, 1906 (34 Stat., 372), as an amendment to the first act of reference and conferring jurisdiction upon the Court of Claims to render judgment and upon the Secretary of the Interior to determine which of the Sisseton and Wahpeton Indians took part in the outbreak, and to prepare a roll of those who did

not participate, and to distribute the proceeds of the judgment. So much of the act as is material to this case reads as follows:

> That jurisdiction be, and hereby is, conferred upon the Court of Claims in Congressional case numbered twenty-two thousand five hundred and twenty-four, on file in said court, entitled "The Sisseton and Wahpeton bands of Sioux Indians against the United States," to further receive testimony, hear, determine, and render final judgment in said cause, for balance, if any is found due said bands, with right of appeal as in other cases, for any annuities which would be due to said bands of Indians under the treaty of July twenty-third, eighteen hundred and fifty-one (Tenth Statutes at Large, page nine hundred and forty-nine), as if the act of forfeiture of the annuities of said bands approved February sixteenth, eighteen hundred and sixty-three, had not been passed; and to ascertain and set off against the amount found to be due to said Indians, if any, all payments, or other provisions of every name or nature made to or for said bands by the United States, or to or for any members thereof, since said act of forfeiture was passed, which are properly chargeable against said unpaid annuities.
>
> Upon the rendition of such judgment, and in conformity therewith, the Secretary of the Interior is hereby directed to determine which of said Indians now living took part in said outbreak and to prepare a roll of the persons entitled to share in said judgment by placing

> on said roll the names of all living members of the said bands residing in the United States at the time of the passage of this act, excluding therefrom the names of those found to have participated in the outbreak; and he is directed to distribute the proceeds of such judgment, except as hereinafter provided, per capita to the persons borne on the said roll; and the court shall consider the evidence now on file in said cause in connection with such other evidence as may hereafter be adduced therein, and the said cause shall be advanced on the docket of the Court of Claims and of the Supreme Court of the United States if the same shall be appealed. * * *

A petition was filed by the claimants under the above act July 28, 1906, and an amended petition January 26, 1907 (Rec., pp. 1 and 4), and the case was brought to trial upon the same evidence presented at the first trial thereof, and the court again made a finding, No. 2 (Rec., p. 9), "that it was impossible from the evidence to determine what members of the claimant bands remained loyal to the United States during the hostilities in question;" and the further finding, No. 5 (Rec., p. 11), that there was an outbreak of the claimants and the "Lower Indians" in 1862, "during which a large number of white settlers were massacred and a vast amount of property destroyed," and that in consequence of the outbreak Congress passed the act of February 16, 1863 (12 Stat., 652), "the forfeiture act."

The court also made another finding, No. 7 (Rec., p. 11), that there was no satisfactory evidence to show the number of scouts and soldiers enrolled from the several bands of Sioux for payment under the acts of March 3, 1891 (26 Stat., 156), March 3, 1893 (27 Stat., 624), and March 2, 1895 (28 Stat., 889).

The account stated by the court, upon which judgment for $788,971.43 was rendered for claimants, finding No. 8 (Rec., pp. 11 and 12), is set out in full for the purpose of comparison with the account between the United States and the claimants rendered by the Secretary of the Interior.

CREDITS.

By fifty installments of $73,600, treaty July 23, 1851	$3,680,000.00
By amount allowed to chiefs for removal and subsistence by said treaty	275,000.00
By amount allowed to chiefs for manual-labor schools, etc.	30,000.00
	3,985,000.00

DEBITS.

Item.		
1.	To twelve installments of annuity under the treaty of 1851 (10 Stat. L., 949) prior to outbreak, less $104.66 returned to the Treasury ($883,200—$104.66), $883,095.34, less $122,509.12 appropriated but not paid at date of forfeiture	$760,586.22
	(See p. 17, Senate Doc. 68, for various statutes.)	
2.	To amount paid to the chiefs for removal and subsistence and for manual-labor schools under the treaty of 1851	305,000.00
3.	To amount appropriated and unpaid at date of forfeiture act, but forfeited and afterwards expended for damages growing out of the outbreak of 1862–63 (12 Stat. L., 652)	122,509.12
4.	To one-half of $100,000 advanced annuity appropriated February 16, 1863 (12 Stat. L., 652)	50,000.00

Item.		
5. To one-half amount paid to scouts and soldiers of the four bands (26 Stat. L., 1038; 27 Stat. L., 624; 28 Stat. L., 889)	$103,176.65	
6. To one-half amount expended for damages and for support, but not for removal (See p. 20, Senate Doc. 68, for various statutes.)	807,824.71	
7. To amount paid for support, etc., under the treaty of February 19, 1867 (See p. 17, Senate Doc. 68, for various statutes making the appropriations.)	464,953.40	
8. To amounts paid under agreement of December 12, 1889	581,978.37	
		$3,196,028.47
Leaving a balance due of		788,971.53

In the statement of the account between the United States and the claimants, rendered by the Secretary of the Interior, the order of the different items has been somewhat changed in order to correspond with their order in the account stated by the court, and is set out as follows:

CREDITS.

By 50 installments of $73,600, annual interest, treaty of July 23, 1851 (10 Stat., 949)	$3,680,000.00
By amount allowed chiefs for removal and subsistence of claimants by said treaty	275,000.00
By amount appropriated for manual-labor schools, mills, shops, etc	30,000.00
	3,985,000.00

DEBITS.

Item.		
1. To 12 installments of annual interest appropriated under treaty of 1851 (10 Stat., 949), prior to outbreak, less $122,404.46 appropriated but unexpended at date of forfeiture act of February 16, 1863 (12 Stat., 652), and $104.66 returned to the United States Treasury	$760,690.88	
2. To amount paid to chiefs for removal, etc., and manual labor schools, etc., under treaty of 1851	305,000.00	

Item.		
3. To balance of 12 appropriations made prior to outbreak, and unexpended at date of forfeiture act, and paid for damages, supplies, etc., under forfeiture act	$122,404.46	
4. To one-half of advance annuity of $100,000 for 1864, appropriated by forfeiture act of February 16, 1863, and expended for damages under forfeiture act	50,000.00	
5. To amount paid to Sisseton and Wahpeton scouts and soldiers (26 Stat., 1038; 27 Stat., 624; 28 Stat., 889)	206,353.30	
6. To one-half of the amount expended for damages, subsistence, removals, clothing, etc. ($1,778,709.48), appropriated by acts subsequent to the forfeiture act (See S. Doc. 68, p. 20)	889,354.74	
7. To amount expended for support, goods, provisions, agriculture, employees, etc., under treaty of February 19, 1867 (15 Stat., 505; see also S. Doc. 68, p. 17)	464,953.40	
8. To amount paid to scouts and soldiers under agreement of December 12, 1889 (26 Stat., 1038)	581,978.37	
9. Amount paid to creditors under the act of May 16, 1874 (18 Stat., 47)	25,472.30	
		$3,406,207.45
Balance due to the claimants under the acts giving the court jurisdiction to hear and determine the case		578,792.45

On May 15, 1907, the claimants appealed from the judgment entered by the Court of Claims in this case, and thereupon the defendants filed an application for a cross-appeal, which was allowed on the same day.

ASSIGNMENT OF ERRORS.

The Court of Claims erred:

First. In deducting twice from the aggregate amount, $883,200, of the 12 installments of $73,600 each, annual interest granted the claimants by the

treaty of July 23, 1851 (10 Stat., 949), the sum of $104.66 returned to the United States Treasury. (Finding 8, Item 1, Rec., p. 12.)

Second. In failing to charge against the unpaid annuities of the claimants granted by the treaty of July 23, 1851, one-half of the sum of $50,016.66, expended for the removal and subsistence of the claimants under the authority of the act of March 3, 1863 (12 Stat., 784), one-half of the sum of $113,043.40, also expended for the removal and subsistence of the claimants under the authority of the act of June 25, 1864 (13 Stat., 172), aggregating the sum of $81,530.03. (Finding 8, Item 6, Rec., pp. 12, 18, 19).

Third. In failing to charge against the unpaid annuities of the claimants granted by the treaty of July 23, 1851, the sum of $25,472.30, expended for the payment of creditors of the claimants under the authority of the act of May 16, 1874. (18 Stat., 47; Rec., p. 20.)

Fourth. In failing to charge against the unpaid annuities of the claimants granted by the treaty of July 23, 1851, the whole amount, $206,353.30, paid to scouts and soldiers under the authority of the acts of March 3, 1891 (26 Stat., 1038), March 3, 1893 (27 Stat., 624), and March 2, 1895 (28 Stat., 889). (See Rec., pp. 12 and 18.)

Fifth. In rendering judgment for the claimants in an amount greater than the sum of $578,792.05, conceded by the United States.

CONSTRUCTION OF THE ACT OF JUNE 21, 1906 (34 STAT., 372).

The original act conferring jurisdiction upon the Court of Claims, March 3, 1901 (31 Stat., 1078), directed the court to ascertain what members of the Sisseton and Wahpeton bands remained loyal to the United States, and did not participate in the depredations of the outbreak of 1862; and if the court should find that said bands preserved their loyalty to the United States it should ascertain and state the amount that would be due to the claimants on account of the annuities granted by the treaty of July 23, 1851, had the "forfeiture act" of February 16, 1863, not been passed, setting off against the annuities "what lands, appropriations, payments, gratuities, or other provisions have been made to or for said bands or to any of the members thereof since said act of forfeiture was passed," and to report the result of its finding to Congress.

In the act of June 21, 1906 (34 Stat., 372), amending the original act of reference, the question of loyalty was eliminated from the jurisdiction of the Court of Claims and transferred to the Secretary of the Interior, and the Court of Claims was given authority to render final judgment "for balance, if any is found due said bands, with right of appeal as in other cases, for any annuities which would be due to said bands of Indians under the treaty of July twenty-third, eighteen hundred and fifty-one (Tenth Statutes at Large, page nine hundred and forty-nine), as if the

act of forfeiture of the annuities of said bands approved February sixteenth, eighteen hundred and sixty-three, had not been passed; and to ascertain and set off against the amount found to be due to said Indians, if any, all payments or other provisions of every name or nature made to or for said bands by the United States, or to or for any members thereof, since said act of forfeiture was passed which are properly chargeable against said unpaid annuities."

The words used in the act of March 3, 1901, "had said act of Congress of February 16, 1863, not been passed," and the words used in the act of June 21, 1906, "as if the act of forfeiture of the annuities of said bands approved February sixteenth, eighteen hundred and sixty-three, had not been passed," are identical in import and were intended simply to repeal the act of February 16, 1863, only so far as it affected the forfeiture of the balance of the annuities granted under the treaty of July 23, 1851, after deducting the charges enumerated by the two acts of Congress giving jurisdiction to the Court of Claims to consider the case. The repeal did not in terms, or by reasonable intendment or implication, attempt to invalidate or modify any of the acts done under or in pursuance of the forfeiture act of February 16, 1863. "The general rule is that when an act of the legislature is repealed without a saving clause, it is considered, except as to transactions passed and closed, as though it had never existed." (Southerland on Statutory Construction, sec. 162.)

Under the act of February 16, 1863, two-thirds of the annuities remaining unexpended at the date of the act, $122,404.46, and two-thirds of the advance annuity for 1864 were appropriated for the payment of damages committed by the Sisseton and Wahpeton bands upon the property of the settlers; and a commission was appointed to investigate and assess all of the damages committed on citizens in Minnesota, which was afterwards extended to citizens in the State of Iowa and the Territory of Dakota. Awards for damages were made by the commission which were afterwards paid by Congress, which in the same act gave authority to the Secretary of the Interior to assess the damages in certain other specified claims, which were also paid (act of May 26, 1864; 13 Stat., 92), and the payment of one claim was made directly by Congress. (March 3, 1877; 19 Stat., 549.)

These were the only acts done under and in pursuance of the forfeiture act, and were charged in the accounts of the Interior Department against the claimants. The transactions were all closed and perfected nearly half a century ago, and it is inconceivable that Congress should now intend by implication to cast a doubt upon the propriety of the charges. The payments were made chargeable in express terms against the unpaid annuities of the claimants by the forfeiture act, and the intention of that act was carried to the subsequent acts directing payment of the claims, and no intimation is hinted at in the acts giving jurisdiction to the Court of Claims of an intention

upon the part of Congress to repeal any of the acts subsequent to the "forfeiture act." On the contrary, such an intention would be antagonistic to the language used in the act of March 3, 1901, making chargeable against the unpaid annuities "lands, appropriations, payments, gratuities, or other provisions made to or for said bands, or to any of the members thereof, since the act of forfeiture was passed;" and that used in the act of June 21, 1906, making "all payments or other provisions of every name or nature made to or for said bands by the United States, or to or for any members thereof, since said act of forfeiture was passed," chargeable against the unpaid annuities of the claimants.

As a matter of fact "all payments" made to the claimants were expressly charged against their annuities by the treaty of June 23, 1851, or the acts of Congress passed subsequent thereto by which they were authorized. Not only were all payments made *to* the bands expressly charged against the unpaid annuities, but certain provisions made *for* the bands were also charged against the unpaid annuities. And in addition it may be said that the payments, subsistence, supplies, goods, clothing, agricultural articles, etc., of which a large part of the appropriations are composed, come directly within the purview of the treaty of July 23, 1851.

So that considering the two acts together it would appear that Congress intended to charge all payments and provisions made to or for the bands, of every name

and nature, against the unpaid annuities, and that the words "properly chargeable" were intended to qualify or limit payments or provisions made to or for individual members. This may be illustrated by an example: Congress, by the act of February 9, 1865 (13 Stat., 427), appropriated $7,500 as a reward to certain individual members of the different bands who had saved the lives of white people during the massacres of 1862. It is conceded that this would not be a proper charge against the unpaid annuities. Then, again, there are a number of Indian scouts and soldiers who are receiving pensions; neither would these be proper charges against the unpaid annuities. Yet under the original act of reference of March 3, 1901, where the words "which are properly chargeable against said unpaid annuities" are not used, these would necessarily have been charges.

The claimants on their part contend that the words employed in the act of June 21, 1906, "which are properly chargeable against said unpaid annuities," are intended to qualify and limit all payments or provisions made either to or for the bands or individual members and that a distinction should be made between payments which might be chargeable against the claimants and those which by their terms are chargeable against the unpaid annuities. This contention loses much of its force when it is remembered that at the time of the treaty of July 23, 1851, the only lands to which the claimants had any kind of title were those in the State of Minnesota,

ceded to the United States by the treaty, and after the ratification of the treaty their only assets were the annuities granted by the treaty, and debts chargeable against their annuities were much better secured than would have been those chargeable against the Indians themselves.

The position taken by the claimants that Congress has always made a distinction in the language employed in various acts in the payment of annuities and payments for other purposes is entirely without force and the statutes and authorities cited without point, in view of the fact that Congress has by the jurisdictional acts of March 3, 1901, and June 21, 1906, by express provision specified the character of the charges against the unpaid annuities.

Let us, however, for the sake of argument, accept the views of the claimants as sound, and it will be readily seen that the distinctions which they attempt to draw are entirely immaterial. They contend that no payments are properly chargeable against their unpaid annuities except such as have been made in accordance with the provisions of the treaty of July 23, 1851, or such as have been specifically charged against the same by restoring the forfeited annuities to that extent.

Now, let us pursue this theory of the case to its logical conclusion. The treaty of July 23, 1851, granted to the claimants, among other things, $68,000 a year for a period of fifty years, from July 1, 1852, in payment for the cession of their lands in Minnesota;

$28,000 to be expended for agriculture, civilization, education, goods, and provisions, and $40,000 as a money annuity. This annuity was increased by $6,500, bringing up the yearly payments to $73,600. In the same proportion, of this amount, $30,305.89 was to be expended for agriculture, civilization, education, goods, and provisions and $43,294.11 for a money annuity. There remained unappropriated at the date of the "forfeiture act" of February 16, 1863, thirty-eight installments of the annuity, or, to be more correct, thirty-seven and one-third installments, as two-thirds of the thirteenth installment were appropriated by the forfeiture act. A careful examination of the various appropriation acts under which payments were made to the claimants, or provisions made for their benefit, clearly shows that they were made for the very purposes for which the annuities in the treaty of 1851 were to be applied, except the payments of the claims for damages, and those were made directly chargeable against the unpaid annuities by the act of February 16, 1863, and those, if not also chargeable under the treaty of 1851, were certainly chargeable under article 6 of the treaty of 1858 (*supra*, p. 5).

However, whether the words "properly chargeable" are intended to limit payments and provisions made to or for the bands or to or for individuals is immaterial, in view of the fact that all payments made to or provisions made for the bands are either chargeable under the acts by which they were authorized or under the treaty of July 23, 1851, or the act of refer-

ence of the claim to the Court of Claims, or the amendatory act conferring jurisdiction upon that court to render judgment.

Item 1, $760,690.88 (Rec., pp. 12 and 17).

At the date of the forfeiture act of February 16, 1863, twelve installments of $73,600 each, of the annual interest under the treaty of July 23, 1851, amounting to $883,200, had been appropriated, and of which $760,690.88 had been expended under the treaty, leaving unexpended $122,404.46, and $104.66 returned to the Treasury. This charge against the unpaid annuities is undisputed.

The court committed the error of deducting twice from the twelve installments of the annuities $883,200 the sum of $104.66 returned to the Treasury. This mistake was made by adding to the amount unexpended, $122,404.46, the amount returned to the Treasury and then deducting that amount again.

Item 2, $305,000 (Rec., pp. 12 and 17).

This item is composed of the amount granted to the chiefs for the removal and subsistence of the claimants, $275,000, and for manual labor school, etc., $30,000.

The claimants have objected to this item in their third assignment of error (Claimant's Brief, p. 5). However, an inspection of their account (Claimant's Brief, p. 35) discloses the fact that they have eliminated the item from both their credits and debits. In other words, they have cancelled it. While no reason has been assigned for the objection, from the

facts just stated it would appear that their objection is one of form and not of substance, and is directed against the bookkeeping methods of the Court of Claims and the Interior Department, and discloses an inclination on the part of the claimants to be somewhat fastidious in matters of form.

Item 3, $122,404.46, and item 4, $50,000 (Rec., pp. 12, 17, and 18.)

These two items, for the same reason given by the court in its opinion, will be considered together. The court in stating the amount in its caption of item 3 has erroneously added the sum of $104.66, as explained under item 1 of this brief.

There remained unexpended of the twelve installments of the annuities at the beginning of the outbreak of 1862, as before stated, the sum of $122,404.46, two-thirds of which were afterwards appropriated, together with the sum of $100,000 as an advance annuity for 1864, for both the claimants and the "Lower Bands," of which one-half was the share of the claimants, by the act of February 16, 1863 (12 Stat., 652), for distribution among persons, their families, and descendants who had suffered damage during the Indian outbreak. Of this amount, $172,404.46, the sum of $120,220.24 was placed at the disposal of the commission appointed under said act and expended in payment of damages. The balance was afterwards disbursed in payment of goods, supplies, and materials furnished the claimants prior to the outbreak and the salaries of agency

and school employees which had accrued both prior and subsequent to the outbreak. (Senate Doc. 68, pp. 4 and 5.)

While the annuities of the claimants were in terms forfeited by the act of February 16, 1863, the forfeiture was in theory only, as appropriations were not only made by the act itself expressly chargeable against the annuities, but appropriations continued to be made thereafter and charged against the unpaid annuities just as though there had been in reality no forfeiture whatever.

Apart from the forfeiture act there appears to have been sufficient authority to render these sums chargeable against the annuities of the claimants. In the treaty of July 23, 1851, the claimants solemnly bound themselves by stipulation in article 1 to maintain perpetual peace with the United States, and it can not be presumed that this provision was without purpose, or that its violation would be free from consequences to the claimants. The Court of Claims said concerning this item of the claim:

> It would not take a very elastic construction of the jurisdictional act in this case to charge the claimants with the sum so expended if there was no other treaty to be considered than that of 1851, for the damages were caused by their own devilish acts and that of their brethern, and there would seem to be no good reason why they should not pay for them. But when we examine the treaty of 1858 (12 Stat. L., 1039) all doubt appears to be removed. By the terms of the latter treaty, *supra*, the claimant Indians expressly agreed

> to pay these damages "out of their moneys in the hands of the United States." We have no hesitancy in charging these two items to the claimants.

That the Secretary of the Interior intended to proceed under article 6 of the treaty of 1858, ante (p. 5), referred to by the Court of Claims in the above quotation, is clearly shown by his letter dated December 10, 1862, to General Sibley, in command of the troops operating against the Indians, asking him whether any discrimination should be made in favor of the claimants and the amount of appropriation that would be required to pay the damages committed by the Indians, and the reply of General Sibley dated July 19, 1862, that both the Wahpetons and Sissetons should be held responsible with the "Lower bands," and placing the value of the property destroyed at over two millions of dollars. Both letters are set out in full in the appendix to this brief, pages 22 to 24.

Item 5, $206,353.30 (Rec., pp. 12 and 18).

The amount stated in this item was appropriated by the acts of March 3, 1891 (26 Stat., 1038), March 3, 1893 (27 Stat., 624), and March 2, 1895 (28 Stat., 889), to pay scouts and soldiers of the Sisseton, Wahpeton, Medawakanton and Wahpakoota bands, now living, and the descendants of those deceased, not included with those who were parties to the agreement of 1889; to be deemed a full settlement of all unpaid annuities up to June 30, 1890.

The total amount of these appropriations, $206,-353.30, was charged by the Secretary of the Interior against the claimants (Senate Doc. 68, statement 7, p. 19), and it must be presumed that it was all paid to the Sisseton and Wahpeton bands, as the account between the United States and the claimants was referred to the Court of Claims in order to afford the claimants an opportunity, which they have not taken advantage of, to surcharge and falsify.

This court in the case of *Knox County* v. *Ninth National Bank* (147 U. S., 97) said: "It is a rule of very general application, that where an act is done which can be done legally only after the performance of some prior act, proof of the latter act carries with it a presumption of the due performance of the prior act;" and in the case of *Nofire* v. *The United States* (164 U. S., 660) this court, affirming the rule laid down in the *Knox County case*, said: "This is the general rule in respect to official action, and one who claims that any such prerequisite did not exist must affirmatively show the fact."

Upon the evidence offered the Court of Claims found that "what number or proportion of the several bands of Sioux enrolled for payment as scouts and soldiers under the acts * * * does not satisfactorily appear from the evidence." (Finding 7, Rec., p. 11.)

The fact of an erroneous charge against the claimants by the Secretary of the Interior not having been established by the evidence, the account as ren-

dered many years ago should have stood, and the whole amount should now be charged against the claimants by this court.

This court in *Perkins* v. *Hart* (11 Wheat., 255) said: "A settled account is only *prima facie* evidence of its correctness at law or in equity; it concludes nothing as to items not stated in it, and may be impeached by a proof of fraud or mistake."

In the case of *Baxter* v. *Waite* (2 Wash. Ter., 238; 6 Pac., 431) it was said that "failure to object to an account rendered within a reasonable time raises a presumption of its correctness and shifts the burden of proof."

In *Talcott* v. *Chew* (27 Fed. Rep., 275) the court said: "A stated account, however, is not conclusive; but when it is admitted in evidence the burden of showing its correctness is thrown on the other party. * * * It follows, therefore, that the Auditor was justified in giving an account stated the weight of evidence *prima facie*." (See also *Pitt* v. *Cholmondeley*, 2 Beasey, 565; 1 Story, Eq. Jr., sec. 525.)

Notwithstanding the fact that this court has repeatedly held that it is bound by the findings of fact certified up by the Court of Claims, and that it will not go behind those findings and consider the evidence upon which they were founded (5 Wall., 419; 17 Wall., XVII; 93 U. S., 605; 111 U. S., 609; 116 U. S., 154), the claimants in this case have attempted to go behind the findings of that court and introduce the evidence presented at the trial of the case

below, and upon which the Court of Claims declined to make a finding. They have not only done this, but in quoting the report of the Commissioner of Indian Affairs (Claimant's Brief, pp. 34 and 35) they have omitted a very important statement. The whole paragraph (Senate Doc. 168, 57th Cong., 2d sess., p. 4, Bound Vol. 4428) reads as follows:

> By the acts of March 3, 1891 (26 Stats., 1056), March 3, 1893 (27 Stats., 624), and March 2, 1895 (28 Stats., 889), Congress appropriated $126,620, $30,666.66, and $49,066.64, respectively, for payment to scouts and soldiers of the Sisseton, Wahpeton, Medawakanton, and Wahpekoota bands of Sioux who served as scouts during the Sioux outbreak in Minnesota in 1862, or who served in the Army of the United States during the war of the rebellion. An investigation of the evidence submitted by applicants for enrollment goes to show that of the 138 names on the census of the scouts and soldiers, made in 1891, that 65 of them belonged to the Medawakanton and Wahpekoota bands, 13 to the Sisseton and Wahpeton bands, and 60 doubtful, not finding evidence upon which to identify them as to their band. Most of those identified appear to have enlisted in the Army in 1861, prior to the Sioux outbreak. It has been ascertained that the Santees are chargeable with at least $94,610.44 of the scout and soldier money, which amount is subject to increase if any of the 60 doubtful ones are identified as Santees.

This alleged evidence, and it was the only evidence presented upon this item of the account, was very properly rejected by the Court of Claims, as the Commissioner of Indian Affairs there stated that he had reached his conclusions upon "an investigation of the evidence submitted by applicants for enrollment," and he does not even state that the evidence, whatever it was, was conclusive, but only that it "goes to show that of the 138 names on the census of the scouts and soldiers, made in 1891, that 65 of them belonged to the Medawakanton and Wahpekoota bands." It will be observed that in that portion of the report omitted from the claimants' brief he stated that "the Santees are chargeable with at least $94,610.44 of the scout and soldier money," and he further stated that this might be "subject to increase if any of the 60 doubtful ones are identified as Santees."

It is undisputed that the account stands to-day just as it did when the report was made, none of the alleged doubtful Indians having been identified as Medawakanton and Wahpekoota Indians since that time. On the contrary, the Secretary of the Interior, in a report dated May 16, 1903 (of record in the case below), states concerning the above report of the Commissioner of Indian Affairs as to the identity of the Indians enrolled, "there is not evidence on file in the Department of that fact;" and in another report, dated February 4, 1907, he states that the books of the Interior Department show that the

whole amount appropriated for scouts and soldiers under the acts of March 3, 1891, March 3, 1893, and March 2, 1895, amounting to $206,353.30, was paid to the Sisseton and Wahpeton Indians, and no part of the same has been charged to the Medawakanton and Wahpekoota Indians, and that "no evidence has been presented to the Department which would justify a change in the amount of this charge."

The two reports referred to are attached as an appendix to this brief, pages 27 and 28.

It is submitted that the findings of the Court of Claims upon this item are binding upon this court, and that the whole of the amount stated in the item should be charged against the unpaid annuities of the claimants.

Item 6, $889,354.74 (Rec., pp. 12, 18, and 19).

The various appropriations making up this item will be taken up separately, and should be considered by the court in connection with items 3 and 4, *supra*, as the reasons there stated in favor of the propriety of charging those items against the unpaid annuities are equally applicable to this item.

Congress by the act of May 28, 1864 (13 Stat., 92 and 93), appropriated $928,411 for the payments of the awards made by the commission appointed under the forfeiture act of February 16, 1863, for damages committed by the claimants and the "Lower Bands," and in the same act appropriated $241,963 for the payment of damages to the property of certain specified individuals whose claims the Secretary of the Interior was directed to investigate and pay; and

by the act of March 3, 1877 (19 Stat., 549), $2,283.92 were appropriated for the payment of damages to the property of one Hans C. Petersen, and of these appropriations $1,778,709.48 were expended for the purposes specified and the balance returned to the Treasury. (Senate Doc. 68, Statement No. 10, p. 20.)

Of the amount so expended one-half should be charged against the unpaid annuities of the claimants, not only because it was a provision for their benefit—the payment of their debts, incurred in violation of article 1 of the treaty of 1851—but also because it was made so chargeable in express terms by the forfeiture act itself as well as by article 6 of the treaty of 1858.

The position taken by the claimants, that every act done under or in pursuance of the forfeiture act has been retrospectively rendered null and void by the language of the act of June 21, 1906, conferring jurisdiction upon the Court of Claims to render judgment for the balance of the forfeited annuities "if any is found due said bands of Indians under the treaty of July 23, 1851 (10 Stat., 949), as if the act of forfeiture of the annuities of said bands approved February 16, 1863, had not been passed," and that vested rights a half century old are to be uprooted and divested by the mere insertion in the jurisdictional act of words which are given by text writers as the effect of the repeal of legislative acts, is too preposterous to require an answer.

If we should take the converse of the rule laid down by Dwarris in his treatise on statutory construction,

page 161, which appears to have been uniformly followed by all later text writers, that "when an act of Parliament is repealed it must be considered (except as to transactions passed and closed) as if it had never existed," we would have substantially the language employed in the act of June 21, 1906. When Congress directs a court to proceed as though an act had never existed, it simply means that the act has been repealed.

This court in the case of *Lincoln* v. *United States* (202 U. S., at page 498) said: "Even if Congress could deprive plaintiffs of their vested rights in process of being asserted (*Hamilton* v. *Dillin*, 21 Wall., 73), still it is not to be presumed to do so on language which, literally taken, has a narrower sense." There the court was speaking not of rights which had actually vested, but of inchoate rights; and further on it said that even in such cases Congress would have to indicate its intention "in clear words, from which there was no escape."

Appropriations were made of $100,000 each by the acts of June 25, 1864 (13 Stat., 180), March 3, 1865 (13 Stat., 559), July 26, 1866 (14 Stat., 279), March 2, 1867 (14 Stat., 514), and of $13,942.03 by the act of June 22, 1874 (18 Stat., 141), for "the subsistence and clothing and general incidental expenses" of the claimants and the Medawakanton and Wahpekoota Indians at their new homes. One-half of these appropriations are proper charges against the unpaid annuities of the claimants, as they were ren-

dered necessary by their removal to a new country, and were for the same purposes for which the forfeited annuities were granted in the treaty of July 23, 1851.

Notwithstanding the fact that the Court of Claims has found that one-half of the money so appropriated was expended for their benefit (item 6, Rec., pp. 12, 18, and 19), the claimants contend that none of the money appropriated by the above acts was expended for them, and in proof of their statement have quoted a garbled extract from the report of the Commissioner of Indian Affairs for 1866 (Claimant's Brief, pp. 19 and 20), from which, after quoting a few lines, they have omitted the paragraph showing that what was said in the quoted extract was equally applicable to the claimants and the Lower Indians. The omitted paragraph is found near the bottom of page 44 of the above-mentioned report and reads as follows:

> At the period of the last report the condition of the various portions of the Santee Sioux, known in our treaties as the Sisseton, Wahpeton, Medawakanton, and Wahpekoota bands, was about as follows:

Then follows the extract from the report of the Commissioner of Indian Affairs, that "nearly or quite 1,000 were at the Crow Creek Reservation, near Fort Randall, far up the Minnesota River," and goes on to state who they were, and that the appropriation of $100,000 was insufficient for their needs.

The inference that the claimants have attempted to draw from this report, after having omitted the paragraph above stated, is that the claimant Indians were never at Crow Creek. This statement is without foundation. The Secretary of the Interior says that the claimants were for a period "merged and located with other bands at Crow Creek" (Senate Doc. 68, bottom of page 11).

The third article of the treaty of 1867 (15 Stat., 505) with the Sisseton and Wahpeton bands, sets apart the Lake Traverse Reservation "for the members of said bands who have heretofore surrendered to the authorities of the Government and were not sent to the Crow Creek Reservation, and for the members of said bands who were released from prison in 1866." The fourth article of the treaty sets apart the Devil's Lake Reservation "for all other members of said bands who were not sent to the Crow Creek Reservation, and also for the Cut-Head bands of Yanktonai Sioux."

The Court of Claims held that one-half of the appropriation of $50,000 by the act of March 3, 1863 (12 Stat., 784), and one-half of $113,043.40, the amount of the appropriation of $137,293.40 by the act of June 25, 1864 (13 Stat., 172), expended for the claimants, amounting to $81,530.03, were not proper charges against their unpaid annuities, upon the ground that the appropriations were for removals and not damages, and therefore did not come within the purview of the treaty of 1858; and not for sup-

port, and therefore did not come within the interpretation of the jurisdictional act by that court; and moreover it was the general policy of the Government to encourage the removal of Indians westward and pay the expenses of removal (Rec., p. 19).

The Court of Claims in discussing this feature of item 6 fell into the initial error of assuming that the appropriations in question were all expended for removal, whereas an examination of the acts in question shows that they provided both for removal and subsistence after removal. While it is an undisputed fact that all of the claimants were removed from their reservation in Minnesota under the act of March 3, 1863 (12 Stat., 819), and their reservation sold and the proceeds expended in establishing them in agricultural pursuits (Senate Doc. 68, Statement 9, p. 19), some of them were removed as prisoners to Davenport, Iowa, some to the Crow Creek Reservation, and some to the reservations at Lake Traverse and Devils Lake, Dakota Territory, set apart for them by articles 3 and 4 of the treaty of 1867.

The claimants contend that they were not removed at the expense of the Government, but removed themselves to their two reservations in Dakota Territory (claimants' brief, pp. 20 and 21). If this statement should be taken as true, then it follows that the amount expended for them under these acts was for subsistence, and is properly chargeable against their annuities under the general purposes for which the annuities were made applicable by the

treaty of July 23, 1851. The account as stated does not separate the amount expended for removal from the amount expended for subsistence, but simply states "for removal, etc." Even had the entire amount been expended for removal, the action of the Government in this case would not be in line with its general policy for the removal of the Indians westward, as their removal was forced by their own unlawful acts upon the Government at a very unfortunate period in the history of this country.

All reasons considered, this amount appears to be a proper charge against the unpaid annuities.

Item 7, $464,953.40 (Rec., pp. 12, 19, and 20).

This item is composed of the various appropriations made and expended in pursuance of the sixth article of the treaty of February 19, 1867 (15 Stat., 505; *ante*, pp. 12 to 14). At the time of the outbreak of August, 1862, and prior thereto, the Sisseton and Wahpeton bands resided upon their reservation in Minnesota, and no lands had ever been occupied or claimed by them, in any treaties or agreements, in the Territory of Dakota (Senate Doc. 68, p. 14). It is, however, a fact that they occasionally hunted buffalo over the northern part of the Territory, but so did the Chippewa Indians, the Yankton and Yanktonais Sioux, and even the Teton Sioux from the Missouri River. It must also be borne in mind that the Sisseton and Wahpeton bands had been removed from their lands even farther east by the treaty of July 15, 1830 (7 Stat., 328). The commis-

sion appointed to investigate the title of the claimants to lands in Dakota Territory and to negotiate a treaty for the extinguishment of their claim reported on September 4, 1866 (Rep. Com. Ind. Affairs, 1866), as follows:

> In this treaty we provided for them a large reservation, buildings, mechanics, etc., but we provided also for the extinguishing (except the right to hunt till settled by whites) of their claim to land in Dakota Territory outside of their reservation. We did this because, first, their claim, in our judgment, was doubtful, they having for years been settled on reservations in Minnesota, and other Indians from the Missouri River claiming the same country; second, we thought it time to quiet this claim, and thus save trouble in the future, and also from the fact we were getting but this as a consideration for the large amounts we proposed to grant them. (P. 240.)

Several months after the above report was made the Government entered into the treaty of 1867, and, doubtless having in view the report of the Commission, no lands were ceded to the United States, but only the right to construct wagon roads, railroads, mail stations, telegraph lines, and other public improvements over the lands in question (article 2). The Government on its part, *in consideration* of the cession, the poverty of the Indians, and the forfeiture of their annuities, ceded the lands embraced in the Lake Traverse Reservation (article 3). Neither party to the agreement had a valid title to the lands

in Dakota Territory, and this was but a preliminary move to their acquisition. The cession of the Lake Traverse Reservation by the Government was made in consideration of the cession of the right to construct wagon roads, etc., under article 2 of the treaty, and gave to the Indians a good and sufficient title where they had none before. The Senate evidently took this view of the matter when it struck out article 6 of the original treaty, which provided for the appropriation of certain sums without reference to the forfeited annuities, and inserted in lieu thereof article 6 as it stands in the treaty to-day (ante, pp. 12 and 13).

The appropriations provided for under this article were to be made "in consideration of the destitution of said bands of Sisseton and Wahpeton Sioux, resulting from the confiscation of their annuities and improvements" and not in consideration of any rights conferred under article 2 of the treaty. This intention has been made perfectly clear by the substitution, and the purpose emphasized by the fact that the objects for which the appropriations were to be made under article 6, and were made under the appropriation acts, are identical with the objects for which the forfeited annuities were to be applied under article 4 of the treaty of July 23, 1851, the general purpose being to place the claimants in the same position they were before their annuities were forfeited in 1862 and at the same time to make the

appropriations a charge against their unpaid annuities.

In pursuance of the provisions of the treaty of 1867, appropriations were annually made from June 27, 1868, to May 29, 1872, for agricultural supplies, goods and provisions, payment of employees, instruction in agriculture, education of children, medicine and medical attendance, and after an interval of eleven years, from March 3, 1883, to June 7, 1897, for support and civilization, pay of employees, purchase of seed, clothing, etc., aggregating the sum of $517,457.25, of which, after deducting an overcharge of $49,666.07 under the agreement of December 12, 1889, and the sums of $1,049.89 and $1,787.89, returned to the Treasury, there were expended under the different acts the sum of $464,953.40.

For reference to all the acts and the purposes for which they were passed, see pages 12 to 14, ante. (See also Senate Doc. 68, Statements 3 and 4, pp. 17 and 18.)

Congress by the act of June 7, 1872 (17 Stat., 281), directed the Secretary of the Interior to examine and report to Congress the title of the claimants to the lands described in article 2 of the treaty of February 19, 1867, and the compensation, if any, that ought to be made for the extinguishment of such title as they were found to possess.

A commission was appointed in pursuance of the act, which also in its report dated October 3, 1872 (Rep. Sec. of Int., 3d sess., 42d Cong., 1872, pp. 505

and 506), casts a doubt upon the title of the claimants to the Dakota lands and stated that—

> We find that these Indians, Sisseton and Wahpeton, [illegible] *other bands*, occasionally hunted over the territory in question, and claimed it as a hunting ground, and it is *equally certain* that the Chippewa Indians *occasionally* in hunting parties passed over the northern portion of it. * * *

The commission entered into an agreement on September 20, 1872, by which all of the lands in article 2 of the treaty of 1867, except those set apart for reservations by articles 3 and 4 of that treaty, were ceded to the United States in consideration of the sum of $800,000, to be paid in ten equal annual installments. This treaty was confirmed by the act of February 14, 1873 (17 Stat., 456), and the different installments were afterwards duly appropriated. (Ante, pp. 14 and 15; Senate Doc. 68, pp. 7, 8, and 14; Statement 5, p. 18.)

The Government having determined to acquire the land in question, and finding several different tribes of Indians claiming it, evidently selected the claimants as a suitable channel through which to conduct negotiations for its acquisition.

This item was intended, in language as clear as the Senate could make it, to be a charge against the unpaid annuities of the claimants.

Item 8, $581,978.37 (Rec., pp. 12 and 20).

This item is made up of appropriations carried by acts of Congress passed in pursuance of article 3 of

the agreement of December 12, 1889 (26 Stat., 1037), providing for the restoration of their proportion of the forfeited annuities to those members of the Sisseton, Wahpeton, Medawakanton, and Wahpekoota bands who had served in the armies of the United States against their own people in the outbreak of 1862, their families, and descendants. By section 7 of the act approving the agreement of 1889 (26 Stat., pp. 1038 and 1039) appropriation was made for carrying out the provisions of the agreement and providing that the payments made "shall be deemed a full settlement of all claims they may have for unpaid annuities under any and all treaties or acts of Congress up to the 30th day of June, 1890."

There were appropriated and expended under the above agreement $581,978.37 (ante, pp. 15 and 16). This item is uncontested by the claimants, but should be considered in connection with item 5.

Item 9, $25,472.30 (Rec., p. 20).

The Court of Claims, in holding that this item was not a proper charge against the unpaid annuities of the claimants, was laboring under the erroneous impression that it formed a part of the consideration for the lands ceded by the claimants under article 2 of the treaty of 1858. A brief history of that transaction will at once correct the mistake.

By article 2 of the treaty of June 19, 1858 (12 Stat., 1037), that part of the lands reserved to the claimants by the original article 3 of the treaty of July 31, 1854 (10 Stat., 326), lying on the north side of the

Minnesota River, was ceded to the United States, and the question of title and consideration left for settlement to the Senate.

The Senate determined that they had a valid title and allowed them 30 cents per acre. The quantity of land having been found by survey to be 569,600 acres, an appropriation for the payment thereof, at 30 cents per acre, amounting to $170,880, was made by the act of March 2, 1861 (12 Stat., 237), and in accordance with the third article of the treaty of 1858, a part of this appropriation was expended in payment of the debts and obligations of the claimants, and the balance in the purchase of goods to be taken by the chiefs and headmen to their respective bands.

The balance of the "debts and obligations," amounting to $25,472.30, was paid out of an appropriation of $70,000 carried by the act of May 26, 1874. (18 Stat., 47.)

These debts were evidently contracted for supplies furnished the claimants, and their payment came within the general objects for which the annuities under article 4 of the treaty of 1851 were applicable, and the amount paid in their settlement was not in consideration of any lands or rights ceded by the claimants, and has always been held by the Secretary of the Interior to be a proper charge against their unpaid annuities. (Senate Doc. 68, pp. 5 and 6; Statement 13, p. 21.)

CONCLUSION.

In conclusion, we feel satisfied that we have made it clear to the court that all of the payments to or for the claimants, charged in the account of the Secretary of the Interior, were properly chargeable against their unpaid annuities, either under the treaty of 1851, subsequent treaties and agreements, or acts of Congress; and we respectfully submit that judgment should not be rendered against the United States for an amount greater than the sum conceded in that account.

John D. Thompson

JOSIAH A. VAN ORSDEL,
Assistant Attorney-General.

GEO. M. ANDERSON,
Special Attorney.

55TH CONGRESS, 2d Session. } SENATE. { DOCUMENT No. 68.

SISSETON AND WAHPETON BANDS OF DAKOTA OR SIOUX INDIANS.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A REPORT CONCERNING THE SISSETON AND WAHPETON BANDS OF DAKOTA OR SIOUX INDIANS, IN CONFORMITY WITH THE REQUIREMENTS OF THE INDIAN APPROPRIATION ACT OF JUNE 7, 1897.

JANUARY 17, 1898.—Referred to the Committee on Indian Affairs and ordered to be printed.

FEBRUARY 2, 1898.—Ordered reprinted with map.

DEPARTMENT OF THE INTERIOR,
Washington, January 15, 1898.

SIR: I have the honor to herewith transmit a report concerning the Sisseton and Wahpeton bands of Dakota or Sioux Indians, in conformity with the requirements of the Indian appropriation act approved June 7, 1897. (30 Stat., 89.)

Very respectfully,

C. N. BLISS,
Secretary.

The PRESIDENT OF THE SENATE.

REPORT OF THE SECRETARY OF THE INTERIOR CONCERNING THE SISSETON AND WAHPETON BANDS OF DAKOTA OR SIOUX INDIANS, MADE IN PURSUANCE OF THE FOLLOWING PROVISIONS OF THE ACT OF CONGRESS APPROVED JUNE 7, 1897 (30 Stat., 89), VIZ:

That the Secretary of the Interior is hereby directed to report to Congress as soon as practicable, or at its next regular session, copies of all treaties or agreements made with the Sisseton and Wahpeton bands of Dakota or Sioux Indians prior to and since eighteen hundred and sixty-three; also a statement in detail, as far as practicable, of all amounts or sums paid to said Indians under said treaties or otherwise, including amounts for subsistence since said period; also the extent of reservations granted to them by said treaties or agreements, or any of them, and amounts now in the Treasury arising from sale of their reservations or portions thereof; also statement of all appropriations made for or on their behalf since said period, or on behalf of any of them.

TREATY OF JULY 15, 1830. (7 STAT., 328.)

By article 1, the Medawakanton, Wahpakoota, Sisseton, and Wahpeton bands of Sioux, or other Indians, ceded to the United States the land within the following boundaries:

Beginning at the upper fork of the Demoine River, and passing the source of the Little Sioux and Floyds River to the forks of the first creek which falls into the Big Sioux or Calumet, on the east side; thence down said creek and Calumet River to the Missouri River; thence down said Missouri River to the Missouri State line above the Kansas; thence along said line to the northwest corner of said State; thence to the high lands between the waters falling into the Missouri and Desmoines, passing to said high lands along the dividing ridge separating the waters of the Missouri from those of the Demoine, to a point opposite the source of the Boyer River, and thence in a direct line to the upper fork of the Desmoine, the place of beginning.[1]

Of this cession, however, only the land north of the Sac and Fox boundary line, as shown on the map and embraced in diagram 1 B, was claimed or owned by the Sioux.

And, by article 3, the said four bands "cede and relinquish to the United States forever a tract of country 20 miles in width, from the Mississippi to the Demoine River, situate north and adjoining the line mentioned in the preceding article" (cession by the Sacs and Foxes).[2]

Also, by article 9, the said Sioux bands asked permission to bestow upon the half-breeds of their nation the tract of land within the following limits:

Beginning at a place called the barn, below and near the village of the Red Wing chief, and running back fifteen miles; thence in a parallel line with Lake Pepin and the Mississippi, about thirty-two miles, to a point opposite Beef (or O-Bœuf) River; thence fifteen miles to the Grand Encampment opposite the river aforesaid; the United States agree to suffer said half-breeds to occupy said tract of country, they holding by the same title and in the same manner that other Indian titles are held.[3]

In consideration of the cessions made the United States agreed to pay $2,000 per annum for ten years to the "Sioux of the Mississippi," comprising the four bands named in article 1 of the treaty.

Only two Sissetons and none of the Wahpetons signed the articles of agreement.

TREATY OF NOVEMBER 30, 1836. (7 STAT., 527.)

By this treaty the Wahpakoota, Sisseton, and Upper Medawakanton bands of Sioux ceded to the United States all their right, title, and interest to the lands lying between the State of Missouri and the Missouri River.[4]

No annuities or payments were guaranteed by this treaty.

TREATY OF JULY 23, 1851. (10 STAT., 949.)

The Sissetons and Wahpetons (and the Medawakantons and Wahpakootas also, by their treaty of August 5, 1851), cede, sell, and relinquish to the United States, by article 2, all their lands in the State of Iowa; also, all their lands in the Territory of Minnesota lying east of the following boundaries:

Beginning at the junction of the Buffalo River with the Red River of the North; thence along the western bank of said Red River of the North to the mouth of the Sioux Wood River; thence along the western bank of the said Sioux Wood

[1] See map, diagram 1 A, 1 B, 1 C.
[2] See map, diagram 2.
[3] See map, diagram 3.
[4] See map, diagram 1 C.

River to Lake Traverse; thence along the western shore of said lake to the southern extremity thereof; thence in a direct line to the junction of Kampeska Lake with the Tchan-kas-an-data or Sioux River; thence along the western bank of said river to its point of intersection with the northern line of the State of Iowa, including all the islands in said rivers and lake.[1]

By article 3, the United States set apart for future occupancy, to be held by them as Indian lands are held—

All that tract of country on either side of the Minnesota River from the western boundary of the lands herein ceded, east to the Tchay-tam-bay River on the north, and to the Yellow Medicine River on the south side, to extend, on each side, a distance of not less than ten miles from the general course of said river.[2]

Senate amendment to the treaty struck out this article, and added a supplementary article, which provided, first, for payment to the "parties to this treaty, at the rate of 10 cents per acre, for the lands included in the reservation provided for in the third article," as originally agreed upon; and, second, for setting "apart by appropriate landmarks and boundaries, such tracts of country without the limits of the cession made by the first (second) article of the treaty as may be satisfactory for their future occupancy and home."

Other lands do not appear to have been set apart for the occupancy of the Indians; but they were allowed to remain upon those described in the original third article of the treaty, and these were confirmed to them as their permanent reservation by the act of July 31, 1854. (10 Stat., 326.)

In further and full consideration of said cession, the United States, by article 4, agreed to pay to said Indians the sum of $1,665,000, at the several times and in the following manner, viz:

1. Two hundred and seventy-five thousand dollars to be paid to the chiefs of the bands to enable them to settle their affairs, and in consideration of removing themselves (within two years) without cost to the Government and subsisting themselves for the first year after removal, also without further cost or expense to the Government.

2. Thirty thousand dollars for manual labor schools, erection of mills and blacksmith shops, opening farms, fencing and breaking land, and for other beneficial objects.

After the payment of these two sums, the balance of the $1,665,000 purchase money, being $1,360,000, was to remain in trust with the United States, and 5 per cent interest thereon, amounting to $68,000 per annum, to be paid annually for the period of fifty years, commencing July 1, 1852, and to "be in full payment of said balance, principal and interest," said interest to be annually applied as follows:

3. Twelve thousand dollars for a general agricultural improvement and civilization fund.

4. Six thousand dollars for educational purposes.

5. Ten thousand dollars for the purchase of goods and provisions.

6. Forty thousand dollars for money annuity.

By the act of August 30, 1852 (10 Stat., 51–52), Congress added $112,000 (being the value of 1,120,000 acres of land, at 10 cents per acre[3]) to the trust fund of $1,360,000, on which interest at the rate of 5 per cent was also to be paid, "being the amount allowed in lieu of the reservation set apart in the original third article of the treaty—thus increasing the annual interest to $73,600, and making $3,680,000 as the full value of the installments to be paid in the aforesaid period of fifty years.

[1] See map, diagram 6.

[2] See map, diagrams 7 and 8.

Twelve of the annual installments of $73,600 each were appropriated by Congress, commencing with the act of 1852, cited above. Two hundred and seventy-five thousand dollars for payment to the chiefs, and $30,000 for manual labor schools, etc., were also appropriated by the same act.

Owing to the participation of the Sisseton and Wahpeton and the Medawakanton and Wahpakoota bands of Sioux in the outbreak of August 18, 1862, known as the "New Ulm massacre," Congress, by act approved February 16, 1863 (12 Stat., 652), abrogated and annulled all treaties between the several bands and the United States, and declared all lands and rights of occupancy within the State of Minnesota, and all annuities and claims previously accorded them, to be forfeited to the United States.

At this point it seems necessary to state that while this report purports and is intended to be an account of history of the affairs of the Sisseton and Wahpeton bands alone, yet, because of their connection with the Medawakantons and Wahpakootas in the rebellion of 1862, and of the subsequent legislation by Congress, involving alike the interests of both branches of these bands, it is found to be imperatively necessary to treat of them conjointly during this period, and, to some extent, to review the financial matter of the latter, as well as of the former, so far as concerns the accrued treaty annuities of both branches up to and including those for the fiscal year 1863, and appropriations made in subsequent years for the payment of damages and losses growing out of that rebellion, and for the expenses of removing all the bands from the State of Minnesota.

By the forfeiture act of 1863, authority was granted for the use of two-thirds of the balance remaining unexpended of annuities due and payable to the four bands for the "present" fiscal year (1863), not exceeding $100,000, and a further sum of $100,000, being two-thirds of the annuity becoming due and payable to them during the next fiscal year (1864), was appropriated, to be apportioned "among the heads of families, or in case of the decease, among the surviving members of families of the State of Minnesota who suffered damage by the depredations" of the said four bands in the late Indian war in that State.

A commission to distribute these moneys was also provided by the same act, and authority given for the use of the sum of $10,000 of the annuities of the said four bands, to pay the expenses of the distribution.

An examination made for the purpose, shows that $90,562.85 remained to the credit of the Sisseton and Wahpetons on the books of the Indian Office at the date of the outbreak of 1862, and, as was afterwards disclosed, $31,841.61 of their money was in the hands of the Superintendent of Indian Affairs, at the same time, which was subsequently refunded by him and placed to their credit—making, in all, $122,404.46 due and unpaid at that time.

To this sum should be added one-half of the $100,000 advance appropriation made by the forfeiture act of 1863—making $172,404.46 available funds to their credit, subject to a charge of $105,000, being one-half of the $210,000 to be placed in the hands of the Commissioners for distribution amongst the sufferers by the war referred to, and for their expenses, under the provisions of the act, and leaving a balance of $67,404.46, which was subsequently disbursed in the payment of indebtedness incurred for goods, supplies, and materials furnished for the use of the Indians prior to the outbreak, and for the salaries of agency and school employees prior and subsequent thereto.

As has been indicated, $305,000 for special purposes and twelve

installments of $73,600 each, and two-thirds (or say $50,000) of the installments for the fiscal year 1864, aggregating $933,200, in all, $1,238,200 [1] have been appropriated and (excepting $104.66) expended under the provisions of the treaty and the act of 1863, leaving unappropriated thirty-eight similar installments (less the above-mentioned $50,000) aggregating $2,746,800—the two sums of the appropriated and unappropriated installments making the amount ($3,680,000) agreed to be paid during the fifty years provided by the treaty.

In the execution of the provisions of the act of 1863, it is ascertained that $120,220.24 of funds due the Sissetons and Wahpetons and $89,779.76 of funds due the Medawakantons and Wahpakootas were placed at the disposal of the commissioners charged with the payment of damages sustained by the sufferers of the rebellion of 1862.

The moneyed interests of the Sissetons and Wahpetons in their treaty of 1851, and the Medawakantons and Wahpakootas in theirs of 1837 and 1851, were practically identical—the former having annuities amounting to $73,600 per annum and the latter $76,450, and the assumption is that Congress, by the legislation of 1863, intended that they should be held equally liable, and that each should pay an equal share of the said damages. Holding this reasoning to be sound, it is clear that each of them should have been charged with $105,000 (being one-half of the sum named in the act of 1863)—whereas it appears that the branch having the smaller income (and always understood to be less culpable than the other) was charged with the greater amount, while the one having the larger income was charged with the smaller sum in the liquidation of these damages. It appears, therefore, that the Sissetons and Wahpetons were charged with $15,220.24 in excess of their proportion, while the Medawakantons and the Wahpakootas were undercharged in the same amount.

TREATY OF JUNE 19, 1858. (12 STAT., 1037.)

By article 2 of this treaty a part of the lands described in the original third article of the treaty of 1851, which were subsequently confirmed to the Indians by the act of July 31, 1854, as a permanent reservation,[2] were ceded to the United States, and the question left to the Senate whether they should be allowed a specific sum of money therefor, and if so, how much; or whether the same should be sold for their benefit, they to receive the proceeds of the sale, after deducting the necessary expenses incident thereto.

By Senate resolution of June 27, 1860, it was determined that the Indians "be allowed the sum of 30 cents per acre for the lands contained in that portion thereof (the reservation) lying on the north side of the Minnesota River." [3]

That portion of the aforesaid cession belonging to the Sissetons and Wahpetons was subsequently ascertained to contain 569,600 acres, and appropriation to pay therefor, at the rate of 30 cents per acre, amounting to $170,880,[4] was made by the act of March 2, 1861 (12 Stat., 237).

Provision was made by the third article of the treaty for the use of a part of the above fund to satisfy the just debts and obligations of the Indians, "and to provide goods to be taken by said chiefs and headmen to the said bands on their return." (This treaty was made in the city of Washington.)

[1] Statement No. 1.
[2] See map, diagrams 7 and 8.
[3] See map, diagram 8.
[4] Statement No. 2.

A part of these "debts and obligations" were paid from the said fund, and the balance thereof was provided for by the act approved May 16, 1874 (18 Stat., 47), which appropriated $70,000 [1] to pay "the creditors of the Upper and Lower Bands of Sioux Indians, arising under the treaty of June nineteenth, eighteen hundred and fifty-eight, between said bands of Indians and the United States, and from the diversion by the United States of the funds and assets of said Indians in their control and possession applicable to that purpose," meaning, doubtless, their confiscated annuities arising under the treaty of 1851.

"Debts and obligations" of the Sissetons and Wahpetons, including expenses of payment, amounting to $25,472.30, were paid, in pursuance of the above act, in 1874. This sum seems to be a proper charge against the Indians in any future adjustment of their account.

An appropriation of $7,500, not provided for by any treaty or agreement, appears to have been made for these Indians in 1865 (act of February 9, 1865, 13 Stat., 427), "for the relief of certain friendly Indians of the Sioux Nation, in Minnesota."

TREATY OF FEBRUARY 19, 1867. (15 STAT., 505.)

The right to construct wagon roads, railroads, mail stations, telegraph lines, and other public improvements was granted by this treaty (art. 2) over and across the lands claimed by the Indians, being those "bounded on the south and east by the treaty line of 1851 and the Red River of the North to the mouth of Goose River, on the north by the Goose River and a line running from the source thereof by the most westerly point of Devil's Lake to the Chief's Bluff, at the head of James River, and on the west by the James River to the mouth of Moccasin River, and thence to Kampeska Lake." [2]

Out of this tract was reserved the following, since known as the Lake Traverse Reservation:

Beginning at the head of Lake Traverse and thence along the treaty line of the treaty of 1851 to Kampeska Lake; thence in a direct line to Reipan or the northeast point of the Coteau des Prairies, and thence passing north of Skunk Lake on the most direct line to the foot of Lake Traverse, and thence along the treaty line of 1851 to the place of beginning.[3]

Also the following, since known as the Devil's Lake Reservation:

Beginning at the most easterly point of Devil's Lake; thence along the waters of said lake to the most westerly point of the same; thence on a direct line to the nearest point on the Cheyenne River; thence down said river to a point opposite the lower end of Aspen Island, and thence in a direct line to the place of beginning.[4]

Provisions were also incorporated in the treaty for the apportionment or allotment of their lands and for the payment of specific sums of money for a definite period of time (arts. 5 and 6), and, by other articles, for other purposes for their benefit and future well being.

By Senate amendments, all articles from and including article 6 were stricken out, and new provisions inserted in lieu thereof, in part, as follows:

ART. VI. And, further, in consideration of the destitution of said bands of Sisseton and Wahpeton Sioux, parties hereto, resulting from the confiscation of their annuities and improvements, it is agreed that Congress will, in its own discretion, from time to time, make such appropriation as may be deemed requisite to enable said Indians to return to an agricultural life under the system in operation on the Sioux reservation in 1862; including, if thought advisable, the establishment and support of local and manual labor schools; the employment of agricultural, mechanical, and other teachers; the opening and improvement of indi-

[1] See statement No. 2.
[2] See map, diagram 12.
[3] See map, diagram 13.
[4] See map, diagram 14.

vidual farms; and generally such objects as Congress in its wisdom shall deem necessary to promote the agricultural improvement and civilization of said bands.

Other provisions were inserted therein, practically similar to those discarded by the Senate, all of which were accepted and ratified by the Indians on April 22, 1867, and the treaty, as amended, was proclaimed May 2, 1867.

Appropriations aggregating $418,457.25[1] were made for the joint benefit of the Indians on the Lake Traverse and Devil's Lake reservations (including that of $12,000 by the act of March 2, 1889), under the provisions of the aforesaid article 6. Of these, $417,422.26 were expended in the care and support of the Indians and $1,034.99 carried to the credit of the "surplus fund." Twelve thousand dollars[1] were subsequently (in 1890 and 1891, prior to the ratification of the agreement of 1889) appropriated for the Indians of the Lake Traverse Reservation, $11,985.10 thereof being expended for their benefit and $14.90 carried to the "surplus fund," and $87,000[2] for those of the Devil's Lake Reservation, of which $79,084.73 were expended for their benefit and $1,787.89 also carried to the "surplus fund," leaving $6,127.38 of the appropriation for the current fiscal year available for expenditure for them up to July 1, 1898. It is apprehended that all this latter amount will be required for the support of the Indians of that reservation, in which event the total amount of expenditures from these funds for the Indians of both reservations will have been $514,619.47.

An appropriation of $45,000, for the survey of the reservations named in the third, fourth, and fifth articles of the aforesaid treaty, was made by the act of April 10, 1869 (16 Stat., 26). All of this amount was expended in the survey of the reservations.

By act of June 7, 1872 (17 Stat., 281), the Secretary of the Interior was directed to examine and report to Congress what title or interest the Sisseton and Wahpeton bands of Sioux Indians had to any portion of the land mentioned and particularly described in the second article of the treaty of February 19, 1867,[3] or by virtue of any other law or treaty, excepting such rights as were secured to said bands by the third and fourth articles of the treaty, as a "permanent reservation;" and whether any, and if any, what, compensation ought in justice and equity to be made to said bands, respectively, for the extinguishment of whatever title they might have to said lands.

In pursuance of this act a commission was appointed by the Secretary of the Interior "with instructions to proceed to the reservation of said Indians, and there, and from the record, make a full investigation of the Indian title, and if they found such title to be valid and complete to negotiate for the relinquishment of the same upon terms at once favorable to the Government and just to the Indians."

This commission reported to the Secretary of the Interior on October 3, 1872, the result of their investigations and findings, and recommended the payment of $800,000 for the lands in question, in ten equal annual installments, without interest, entering into an agreement with the Indians, dated September 20, 1872, by which they ceded to the United States all of the land described in the second article of the treaty of 1867, excepting the Lake Traverse and Devils Lake reservations,[3] which agreement, excepting paragraphs numbered from 3 to 9, inclusive, was confirmed by act of Congress approved February 14, 1873 (17 Stat., 456), and the first installment of $80,000 was ap-

[1] See statement No. 3. [2] See statement No. 4. [3] See map, diagram 12.

propriated by the same act, with the proviso "that no part of this amount shall be expended until after the ratification by said Indians of said agreement as hereby amended."

This agreement, as amended, was subsequently ratified by the Indians, and nine other installments of $80,000 each were appropriated, commencing with the act of June 22, 1874 (18 Stat., 167), and ending with the act of May 17, 1882 (22 Stat., 88), making, in all, the $800,000 [1] agreed to be paid.

Section 7 of the act of July 15, 1870 (16 Stat., 361), provided:

> That the act approved March three, eighteen hundred and sixty-three, entitled "An act for the removal of the Sisseton, Wahpeton, Medawakanton, and Wapakoota bands of Sioux or Dakota Indians, and for the disposition of their lands in Minnesota and Dakota," be so amended as to make the proceeds of the sale of the reservations in said act ordered to be sold applicable alike to all the reservations upon which Medawakanton, and Wakapoota and Sisseton and Wahpeton have been or may hereafter be located.

And section 8:

> That said proceeds shall be distributed and paid equitably to the said Indians in proportion to their numbers: * * * *Provided*, That this provision shall apply only to the funds to be hereafter distributed.

The Sissetons and Wahpetons alone were interested in the above-mentioned $800,000, and the distribution thereof was based upon the provisions of the act of 1870, just cited, three-fifths thereof having been expended for those attached to the Lake Traverse Reservation, and two-fifths for those at the Devils Lake, it being estimated that there were, approximately, fifteen hundred Indians at the former and one thousand at the latter.

By the act of March 3, 1891 (26 Stat., 1010), $80,000 [2] were appropriated to pay the Indians at the Devils Lake Reservation for 64,000 acres of land, to which they were entitled under the treaty of 1867, but which were not included within the boundaries of their reservation by surveys made in 1875.[3] This sum was expended for the benefit of the Indians of that reservation in stock cattle, agricultural implements, harness, and other necessary articles, including 217 houses for Indians.

AGREEMENT OF DECEMBER 12, 1889.

(Ratified by act of Congress approved March 3, 1891, 26 Stat., 1035.)

By this agreement the Sissetons and Wahpetons ceded all the unallotted lands of their reservation (Lake Traverse) in North and South Dakota, to be paid for by the United States, at the rate of $2.50 per acre.[4]

Provision was also made for the payment to them of "the amount found to be due certain members of the bands who served in the armies of the United States against their own people, when at war with the United States, and their families and descendants," under the provisions of the fourth article of the treaty of July 23, 1851, of which they were deprived by the forfeiture act of 1863, on the basis of $18,400 per annum from July 1, 1862, to July 1, 1901, when the provisions of the treaty of 1851 would have expired, less their proportion of certain appropriations made for their benefit since 1862.

The amount specified in the agreement for this purpose was $342,778.37 up to July 1, 1888, together with another installment of $18,400 for the year ending July 1, 1889.

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[1] See statement No. 5.
[2] See statement No. 4.
[3] See map, diagram 14.
[4] See map, diagram 13.

The act of March 3, 1891 (sec. 27), appropriated $376,573.37 [1], including the installments of $18,400 due July 1, 1889, and July 1, 1890, which sum, when paid to the bands of Sioux Indians "designated in this act, shall be deemed a full settlement of all claims they may have for unpaid annuities, under any and all treaties or acts of Congress up to the thirtieth day of June, eighteen hundred and ninety."

The preceding calculations were based upon a period of twenty-seven years—from July 1, 1862, to July 1, 1888—at the rate of $18,400 per annum, making $496,800, from which was to be taken their pro rata share of $616,086.52 appropriated for their benefit previous to the date of the agreement (H. R. No. 1953, 50th Cong. 1st sess.), their share thereof being rated at one-fourth of the whole, $154,021.63, leaving $342,778.37 due them for the period stated.

But as has been previously demonstrated but $417,422.26 were expended between 1867 and 1890, of appropriations made under the provisions of the treaty of 1867, for the joint account of the Indians of both the Lake Traverse and Devils Lake reservations, and it seems clear that the Indians of the former reservation, with whom the agreement of 1889 was made, are chargeable with their pro rata share of the amount last stated, rather than with their proportion of the $616,086.52 named in the agreement.

With this understanding, and upon the basis of calculation adopted by the framers of the agreement, the Lake Traverse Indians are chargeable with $104,355.56 instead of $154,021.63, a difference of $49,666.07 [2] in their favor. They are also chargeable with the $11,985.10 appropriated and expended for their benefit in 1890 and 1891, and the Indians of the Devils Lake Reservation are chargeable with the $79,084.73 appropriated and expended for them since 1889, and will be chargeable with so much of the $6,127.38 balance on hand as may be expended for them during the remainder of the present fiscal year.

A further appropriation of $126,620 [3] was made by the same act, to pay "scouts and soldiers of the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands of Sioux, and the members of their families and descendants now living, of such scouts and soldiers as are dead," who were not included as parties to the agreement, such payment to be deemed a full settlement of all claims they may have for unpaid annuities up to June 30, 1890.

Appropriation was also made by the same act of the sum of $1,699,800,[1] "or so much thereof as may be necessary," to pay for the lands ceded, sold, relinquished, and conveyed by the agreement, at the rate of $2.50 per acre, the amount so realized to be placed in the Treasury of the United States to the credit of the Sissetons and Wahpetons, at 5 per cent interest per annum, both principal and interest to be subject to application by order of the President for the education and civilization of said bands or members thereof.

This appropriation was based upon the number of acres contained in the reservation (reported at 918,780), and the number already allotted and the number that would be required for allotment to those entitled under article 4 of the agreement, but to whom allotments had not been made, estimated in all at about 256,000 acres, and leaving about 663,000 acres to be paid for under the agreement.

The amount placed at the disposal of the Department by Congress for the purpose, $1,699,800, was sufficient to pay for 679,920 acres, at the price fixed, and the whole of this sum was placed to the credit of

[1] See statement No. 6. [2] See statement No. 3. [3] See statement No. 7.

the Indians as of date March 3, 1891, and they have ever since been receiving interest thereon, at the rate of 5 per cent per annum.

But it is now discovered that the actual area of the reservation was 918,770.58 acres, and that 309,904.92 acres were required for allotment, leaving the area of the ceded portion 608,865.66 acres.

The payment for 679,920 acres was, therefore, for 71,054.34 acres in excess of the quantity ceded, amounting to $177,635.85 in excess of the value of the land purchased, and thus entitling the Indians to a credit of $1,522,164.15 instead of $1,699,800, the sum placed to their credit under the provisions of the act.

Interest amounting to $58,412.98, from March 3, 1891, to September 30, 1897 (the latest date to which interest on their landed fund has been appropriated by the Treasury Department), has been paid to the Indians in excess of the amount actually due them.

The fund now to the credit of these Indians in the Treasury amounts to $1,500,000, a per capita payment of $199,800 of the original principal having been authorized by the President on January 19, 1895, and made to them under the provisions of section 27 of the act of 1891, before cited.

Eight other installments of $18,400 each, under the agreement of 1889, including a deficiency of $3,000 in the appropriation made by the act of March 3, 1891, aggregating $150,200,[1] have been appropriated since the act of 1891—including the installment due in the fiscal year 1898—all of which has been paid to the Indians in accordance with the terms of the agreement.

Sums aggregating $79,733.30,[2] appropriated by the acts of March 3, 1893, and March 2, 1895, have been paid to the scouts and soldiers, or to the families and descendants of those deceased, who were not parties to the agreement of 1889, these payments being in final settlement of all amounts due or to become due them up to and including the installment that would be due in the year 1901.

ACT OF MARCH 3, 1863. (12 STATS., 819.)

Provided for the removal of the Sisseton, Wahpeton, Medawakanton, and Wahpakoota bands to a tract of unoccupied land outside of the limits of any State; for the survey of their reservation in Minnesota and Dakota; for the sale of the lands thereof at public sale, as other public lands are sold, and "that the money arising from said sale shall be invested by the Secretary of the Interior for the benefit of said Indians in their new homes, in the establishing them in agricultural pursuits."[3]

These reservations contained 721,172.65 acres, and the appraised valuation thereof was $941,218.31.

Sales have been made to an amount of $944,810.78,[4] including interest on deferred payments.

The first proceeds were received in 1865, and from that time up to July 15, 1870, the amounts so received were carried upon the books of the Indian Office under one general title and expended jointly for the benefit of the Sissetons and Wahpetons and the Santees (Medawakantons and Wahpakootas).

On the date last named, under the provisions of the act of that date, before cited, the account was duly divided into two parts—one for the

[1] See statement No. 6.
[2] See statement No. 7.
[3] See map, diagram 7.
[4] See statement No. 9.

Sissetons and Wahpetons at the Lake Traverse and Devils Lake reservations, and one for the Santees, proportioned according to the number of Indians constituting the two branches. Again, on July 1, 1871, the Indians at the Devils Lake Reservation having become located, the account of the Sissetons and Wahpetons was divided into two parts, one each for those at the Lake Traverse and the Devils Lake reservations.

Of the sum received, $934,415.61 has been expended, leaving a balance of $10,395.17 on hand.

Up to July 15, 1870, $206,753.66 were expended jointly for the benefit of the four bands. Between that date and July 1, 1871, $19,159.19 were expended jointly for the Sissetons and Wahpetons, on the two reservations named, and since then $293,033.64 for those on the Lake Traverse Reservation, and $195,979.98 for those on the Devils Lake. Since July 15, 1870, $219,489.14 has been expended for the Santee Sioux in Nebraska.

The basis for division of these funds in 1870 was 0.6766 per cent for the Indians on the Lake Traverse and Devils Lake reservations, and 0.3234 per cent for the Santees. The division in 1871 was on the basis of 0.3438 per cent for the latter, 0.4534 for those at Lake Traverse, and 0.2328 for those at Devils Lake. All proceeds received since July 1, 1872, have been distributed on the basis of three-sevenths for those at the Lake Traverse Reservation and two-sevenths each for those at the Devils Lake and for the Santees, it being estimated that there were 1,500 of the former and 1,000 each of the two latter, 3,500 in all. These proportions have since been maintained in dividing the proceeds of these lands.

Of the balance on hand, $9,257.15 belongs to the Lake Traverse branch, $934.62 to the Devils Lake, and $203.40 to the Santees.

REMOVAL OF INDIANS AND PAYMENT OF DAMAGES ARISING UNDER THE PROVISIONS OF THE ACT OF FEBRUARY 16, 1863.

Appropriations aggregating $1,849,660.01 [1] were made from time to time between March 3, 1863, and March 3, 1885, for paying the expenses of removing and subsisting the Sissetons, Wahpetons, Medawakantons, and Wahpakootas, and for the payment of damages sustained by citizens of Minnesota, resulting from the outbreak of 1862, of which amount $1,778,709.48 was expended in the payment of authorized claims; the balance, $70,950.53, being returned to the Treasury.

These expenditures were made necessary by the joint action of the four bands, for which the two branches seem to be equally liable. As no difference in degree of liability has been recognized, it would appear that each branch is clearly responsible for one-half thereof—$889,354.74.

SUBSISTENCE SUPPLIES.

In answer to the inquiry as to what amount has been paid since 1863 for subsistence for the Sissetons and Wahpetons, it is proper to state that the records of the Indian Office show that, approximately, $600,000 of the various funds appropriated for their benefit have been expended in the purchase of subsistence for them, independent of the cost of that furnished them during the period they were merged and located with other bands on the Crow Creek Reservation.[2] Owing to

[1] See statement No. 10.

[2] See map, diagram 11.

the manner in which the records of expenditures are necessarily kept, it is impracticable to arrive at the exact amount thus expended without examining each one of many thousands of vouchers in the files of the Indian Office, covering the expenditures in their behalf for the past thirty-four years.

The greater part of the expenditures for these Indians has been in the direction of agricultural improvement, for stock, cattle and horses, implements, wagons and harness, and the erection of houses for allottees or for those who had selected lands upon which to locate prior to allotment. It is, therefore, thought that the amount above reported practically covers the value of subsistance supplies furnished.

A review of the landed interests of the Sissetons and Wahpetons shows:

By the treaty of July 15, 1830, the Sissetons and Wahpetons, with the Medawakanton, Wahpakoota, Yancton, and Santee bands of Sioux and other tribes of Indians, consisting of the confederated Sacs and Foxes, the Omahas, Iowas, Ottoes, and Missourias, ceded all their right and title to the tract of land described in article 1 of the treaty;[1] and by article 3, the four bands first named ceded a further tract, 20 miles wide, from the Mississippi to the Demoine River,[2] for which the United States agreed to pay the said four bands $2,000 annually for a term of ten years, the payment of which, together with certain other allowances specified in the fourth, fifth, and eighth articles of the treaty, was to be considered as full compensation for the cession and relinquishment made. A tract of country was also to be set apart for the half-breeds of the Sioux Nation, the four bands in question,[3] all of which agreements were fulfilled by the United States.

A further cession was made by the Wahpakoota, Sisseton, and Upper Medawakanton bands of Sioux by the treaty of November 30, 1836, whereby they ceded all their right, title, and interest, "of whatsoever nature, in and to the lands lying between the State of Missouri and the Missouri River, and do freely and fully exonerate the United States from any guaranty, condition, or limitation, expressed or implied, under the treaty of Prairie du Chien (of 1830) aforesaid, or otherwise, as to the entire and absolute disposition of the said lands, fully authorizing the United States to do with the same whatever shall seem expedient or necessary,"[4] thus confirming to the United States all their right and interest in and to the lands ceded by the treaty of 1830.

The Sissetons and Wahpetons, by article 2 of the treaty of July 23, 1851, jointly with the Medawakantons and Wahpakootas, ceded, sold, and relinquished to the United States, all their interest in lands in the State of Iowa, and also all their lands in Minnesota Territory, lying east of boundaries described therein,[5] reserving a certain tract described in article 3, for their future occupancy and home;[6] but this latter provision of the treaty was rejected by the Senate, and an amendment inserted by that body, agreeing to pay the Indians at the rate of 10 cents per acre for the lands included in the reservation provided by the said third article, and further stipulating that the President should cause to be set apart by appropriate landmarks and boundaries such tracts of country without the limits of the cession made by the second article, as might be satisfactory for their future occupancy and home. This provision of the treaty was never carried into effect; but the Indians were allowed to retain the lands in ques-

[1] See map, diagram 1 A, 1 B, 1 C.
[2] See map, diagram 2.
[3] See map, diagram 3.
[4] See map, diagram 1 C.
[5] See map, diagram 6.
[6] See map, diagrams 7 and 8.

tion, and Congress subsequently, by the act of July 31, 1854, confirmed the same to them as a permanent reservation.

Thus it appears by these treaties that these bands (the Sissetons and Wahpetons) ceded all the lands in which they had any right, title, or interest, excepting the tract retained for their future reservation, above described.[1]

The treaty of June 19, 1858, by articles 1 and 2, seems to confirm this view of the case. By article 1, it was agreed that so much of that part of the reservation which lies south or southwardly of the Minnesota River, being a part [1] of the land described in article 3 of the treaty of July 23, 1851, "shall constitute a reservation," and should be surveyed and allotted in severalty to those entitled; the residue (the unallotted portion) to be held by the said bands in common. Article 3 refers to the failure to locate them upon other lands, "without the limits of the cession" (the cession by article 2 of the treaty of 1851), as per the Senate amendment to that treaty, and agrees, "that the question shall be submitted to the Senate for decision whether they have such title (to the lands reserved by the treaty of 1851), and if they have, what compensation shall be made to them for that part of said reservation or tract of land lying on the north side of the Minnesota River." (They were afterwards paid at the rate of 30 cents per acre for this land by the act of March 2, 1862.)

The Government had failed to locate or establish them upon other lands "without the limits of the cession" made by the treaty of 1851, and the lands reserved by the rejected third article of that treaty were confirmed to them by the treaty of 1858, as well as the act of 1854; but no claim was made by these Indians, or mention thereof, in the latter treaty, to any other lands whatsoever.

And thus the matter rested until the confiscation of their annuities and the forfeiture of all lands and the rights of occupancy thereof in the State of Minnesota; and their removal under the provisions of the act of February 16, 1863, and final location on lands in Dakota, known as the Lake Traverse and Devils Lake reservations, Congress in the meantime, by the act of March 3, 1863, authorizing the sale of their reservations in Minnesota and Dakota, being those reserved by and described in the treaty of 1851.

The treaty of 1867 was made in consideration of the friendly attitude of a portion of the Sissetons and Wahpetons during and after the outbreak in 1862; because of the confiscation of their annuities and reservations; because no provision had been made for the support of these friendly Indians, and because of the request of the friendly subdivisions of these bands "that their adherence to their former obligations of friendship to the Government and the people of the United States be recognized, and that provision be made to enable them to return to an agricultural life and be relieved from a dependence upon the chase for a precarious subsistence."

By this treaty was ceded (art. 2) the right to construct wagon roads, railroads, mail stations, telegraph lines, and other public improvements over a tract of country described therein,[2] in consideration of the reservations set apart by articles 3 and 4 (Lake Traverse [3] and Devils Lake [4]), upon lands in Dakota, and for other considerations, which were rejected by the Senate.

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[1] See map, diagram 7.
[2] See map, diagram 12.
[3] See map, diagram 13.
[4] See map, diagram 14.

The country described in article 2 in some respects conformed to the treaty line of 1851, but embraced other lands never before occupied or claimed by them in any treaty—the right of occupancy of which by them fails to appear in the record—and it would seem that the framers of this treaty lost sight of the cessions and claims of these bands in previous treaties.

There being a doubt of the right of the Indians to the lands described in the said article 2,[1] Congress, by act approved June 7, 1872 (17 Stat., 281), directed the Secretary of the Interior to examine and report to that body what title or interest they had "to any portion of the land mentioned and particularly described" therein. An investigation of the matter by a commission appointed by the Secretary of the Interior for the purpose resulted in the agreement of September 20, 1872, before referred to, and the payment of $800,000 to the Indians.

In a report to the Secretary of the Interior, dated October 3, 1872, in conformity with instructions of the Secretary to investigate and ascertain what title or interest the said bands had to any portion of the lands mentioned and particularly described in article 2 of the treaty of 1867, under the same or by virtue of any other treaty, the aforesaid commission say:

> Upon consideration of the premises, we find and report as a matter of fact that the Sioux Indians, of which the Sisseton and Wahpeton bands form a part, have claimed the country west of the Mississippi and southerly of Devils Lake, embracing the region described in article 2 of said treaty as belonging to them; while the Chippewa Indians have also, prior to the time of said treaty, set up a claim to a portion of the northern part of said country.

The commission refer to a paper in possession of one of the chiefs, "probably drawn for them by some trader," as tending to show the extent of their territorial claim at and before the time of making the treaty of 1867, and say, further:

> We find that these Indians, Sissetons and Wahpetons and other bands, occasionally hunted over the territory in question, and claimed it as their hunting ground, and it is equally certain that the Chippewa Indians, occasionally in hunting and war parties, passed over the northern portion of it.

In view of all the circumstances, a majority of the commission determined that in equity and justice the value of the right and interest of the Sissetons and Wahpetons ought to be fixed at $800,000, which sum was agreed upon, as provided by the agreement of September 20, 1872, although a minority of the commission was of the opinion "that said estimate of value was larger than ought to be allowed in equity."

With this adjustment, all the land matters of these two bands were settled, leaving them the owners and possessors of the lands embraced in the Lake Traverse and Devils Lake reservations.

The Indians on the former reservation disposed of their unallotted lands under the agreement of December 12, 1889, leaving that portion of the bands on the Devils Lake Reservation the owners of the lands within the limits of its boundaries.

As to the consideration for the several cessions set out in the foregoing treaties, agreements, and acts of Congress:

For these cessions by the treaties of 1830 and 1836, their claims or interests being of doubtful character and nominal value, but nominal payments were made, although a reservation was granted for the half-breeds of their nation.

For those by the treaty of 1851 they were to receive $73,600 per annum for fifty years, together with cash payments and other consid-

[1] See map, diagram 12.

erations amounting to $305,000, aggregating $3,985,000. As has been shown, $1,238,000 were provided by Congress and expended for their benefit. A reservation was also promised (art. 3), but the Senate dissented from this concession, and agreed that they should have other lands in lieu, but at the same time authorized an increase of the principal upon which their income was based by adding $112,000 thereto, being the value of the aforesaid reservation, at the rate of 10 cents per acre for 1,120,000 acres, upon which they were to receive 5 per cent interest. This increased their income by $5,600 per annum, making the same $73,600 instead of $68,000, as originally fixed by the treaty. This reservation was, however, finally confirmed to them, and a portion of it (569,600 acres) sold by them to the Government at 30 cents per acre, realizing $170,880, leaving them in undisturbed possession of the remainder of the reservation.

Then the outbreak of 1862 occurred, and the act of February 16, 1863, was passed confiscating the annuities and all their lands in the State of Minnesota.

In the meantime they had received the increased income of $5,600 per annum for twelve and two-thirds years, amounting to about $70,933, and the proceeds of the portion of their reservation above noted.

But the act of 1863 confiscated their Minnesota lands in theory only, and not in fact, as, by the act of March 3 of that year, authority was granted for the sale of these lands and those in Dakota, and the expenditure of the proceeds for their benefit. These reservations were the remainder of that set apart for them under the treaty of 1851. They have, therefore, received wholly $760,177.58 as the result of these several transactions in reservations provided by the treaty of 1851, and participated in their proportionate share of $206,753.66, proceeds of the reservations sold under the provisions of the act of March 3, 1863, expended jointly for the benefit of themselves and the Santees prior to July 15, 1870.

Under the treaty of 1867 they received concessions of land aggregating 1,149,422 acres (Lake Traverse and Devils Lake reservations) and money considerations aggregating $514,619.47, and those at Devils Lake received $80,000, due to erroneous survey of their reservation.

They also received $800,000 under the agreement of 1872 for cessions made by the treaty of 1867.

For the cessions made by the agreement of December 12, 1889, they received $1,699,800 in payment for lands given them under the treaty of 1867, yet having the Devils Lake Reservation intact (230,651.54 acres), and retaining 309,904.92 acres of allotted lands on the Lake Traverse Reservation, these two tracts, rated at the price paid them for their unallotted lands, being valued at about $1,351,391. Besides, they were granted annuities of $18,400 per annum for forty years, aggregating $736,000, and $206,353.30 were provided to pay the scouts and soldiers of their bands. Other sums, aggregating $922,327.04, including their proportion of the expenses of removal and maintenance and for damages, have been appropriated and expended in their behalf; also accrued interest on their landed fund in the Treasury, under the agreement of 1889, amounting to $534,298.01,[1] has been paid to them in cash and expended for their benefit.

[1] See statement No. 11.

EXTENT OF RESERVATIONS.

	Acres.
Treaty of 1830: Lake Pepin, half-breed (diagram 3)	320,819.48
Treaty of 1851: South of Minnesota River (diagram 7, estimated)	550,400.00
North of Minnesota River (diagram 8, estimated)	569,600.00
Treaty of 1867: Lake Traverse Reservation (diagram 13)	918,770.58
Devils Lake Reservation (diagram 14)	230,651.54
Total	2,590,241.60

The lands embraced in diagram 3 were surveyed to ascertain the pro rata share of each half-breed, and scrip, locatable within or outside of the reservation, was issued to the persons entitled thereto (act of June 17, 1854, 10 Stat., 304); those embraced in diagram 7 were sold under the provisions of the act of March 3, 1863; those in diagram 8 were purchased by the United States under the provisions of the treaty of 1858, and the unallotted portion of those in diagram 13 were also purchased by the United States under the provisions of the agreement of 1889.

Ample authority exists under the provisions of the act of March 3, 1891, for the adjustment of the overcredit of $177,635.85 given the Indians in the settlement with them for the lands purchased under the agreement of 1889. The payment in question was limited to $1,699,800, "or so much thereof as may be necessary." It being now ascertained that $1,522,164.15 was the actual value of the lands then ceded, the account may be adjusted under the provisions of the act named without further legislation.

It is not clear, however, that the overpayment of $58,412.98 in interest is a proper charge against the principal of their fund without legislation by Congress authorizing that method of adjustment; nor does it seem that their principal should be depleted for that purpose. That course would entail a loss of income of nearly $3,000 per annum for all time. While the Indians have received the benefit of this money in increased annual payments, yet it was involuntary on their part and without their knowledge or intervention.

By the correction of the principal of their fund their annual income will be reduced from $75,000 to $66,118.21. A further reduction of the principal to restore the overpaid interest would permanently reduce their income to $63,197.55 per annum—nearly $12,000 per annum less than they have been receiving and expect to receive.

The Indians of the present generation have been the beneficiaries of this overpayment and should be required to make restoration. Any other system of adjustment would involve their descendants in losses for which they are not responsible. It therefore seems that an equitable and just settlement would be accomplished by reduced payments to the Indians for a series of years, say for the next six years, during which at the rate of $10,000 per annum might be retained until the whole sum is restored to the Government. This course will not require legislation.

Copies of the several treaties and agreements, with various statements showing the financial transactions and a tracing of a map of the reservations referred to, accompany this report.

STATEMENT No. 1.—*Treaty of July 23, 1851.*

Act of Congress.	Statute. Vol.	Page.	Object.	Appropriated.	Expended.
Aug. 30, 1852	10	51	Removal and subsistence	$275,000.00	$275,000.00
			Manual labor school, etc	30,000.00	30,000.00
			Interest—annuity	73,600.00	
Mar. 3, 1853	10	235	do	73,600.00	
May 31, 1854	10	293	do	73,600.00	
July 31, 1854	10	326	do	73,600.00	
Mar. 3, 1855	10	696	do	73,600.00	
Aug. 18, 1856	11	76	do	73,600.00	
Mar. 3, 1857	11	181	do	73,600.00	[a]933,095.34
May 5, 1858	11	283	do	73,600.00	
Feb. 28, 1859	11	399	do	73,600.00	
June 19, 1860	12	55	do	73,600.00	
Mar. 2, 1861	12	231	do	73,600.00	
July 5, 1862	12	522	do	73,600.00	
Feb. 16, 1863	12	652	Interest—advance annuity	50,000.00	
			Amount returned to the United States Treasury		104.66
				1,238,200.00	1,238,200.00

[a] This fund was charged with an excess of $15,220.24, in payment of the proportionate share of these bands of damages sustained by citizens of Minnesota in 1862. (See report.)

STATEMENT No. 2.—*Treaty of June 19, 1858.*

Act of Congress.	Statute. Vol.	Page.	Object.	Appropriated.	Expended.
Mar. 2, 1862	12	237	To pay for 569,600 acres of land, at 30 cents per acre, on the north side of the Minnesota River, originally described in article 3 of the treaty of July 23, 1851, and subsequently confirmed to the Indians as a reservation by the act of July 31, 1854	$170,880.00	$170,880.00
May 16, 1874	18	47	To pay creditors of Upper bands of Sioux, being part of appropriation of $70,000 to pay claims against both Upper and Lower bands	25,472.30	25,472.30
				196,352.30	196,352.30

STATEMENT No. 3.—*Treaty of February 19, 1867.*

Act of Congress.	Statute Vol.	Page.	Object.	Appropriated.	Expended.
June 27, 1868	15	217	For support	$52,457.25	
Mar. 3, 1869	15	315	do	60,000.00	
Apr. 20, 1870	16	88	do	10,000.00	
July 15, 1870	16	354	do	50,000.00	
Mar. 3, 1871	16	563	do	75,000.00	
May 29, 1872	17	183	do	75,000.00	
Mar. 3, 1883	22	447	do	16,000.00	[a]$417,422.26
July 4, 1884	23	91	do	16,000.00	
Mar. 3, 1885	23	378	do	16,000.00	
May 15, 1886	24	42	do	12,000.00	
Mar. 2, 1887	24	462	do	12,000.00	
June 29, 1888	25	231	do	12,000.00	
Mar. 2, 1889	25	996	do	12,000.00	
Aug. 19, 1890	26	352	do	6,600.00	11,985.10
Mar. 3, 1891	26	1005	do	6,000.00	
			Amount returned to the United States Treasury		1,049.89
				430,457.25	430,457.25

[a] This amount is subject to a reduction of an overcharge of $49,666.07, made in the settlement with the Indians under the provisions of article 3 of the agreement of December 12, 1889. (See report.)

STATEMENT No. 4.—*Payment for land and support of Sissetons and Wahpetons at Devils Lake Agency.*

Act of Congress.	Statute. Vol.	Statute. Page.	Object.	Appropriated.	Expended.
Feb. 27, 1890	26	15	For support	$25,000.00	
Aug. 19, 1890	26	352	.....do	6,000.00	
Mar. 3, 1891	26	1005	.....do	6,000.00	
	26	1010	In payment for land not included within the boundaries of their reservation by surveys made in 1875	80,000.00	$159,084.73
July 13, 1892	27	135	For support	6,000.00	
Mar. 3, 1893	27	628	.....do	6,000.00	
Aug. 15, 1894	28	303	.....do	6,000.00	
Mar. 2, 1895	28	892	.....do	12,000.00	
June 10, 1896	29	338	.....do	10,000.00	
June 7, 1897	30	78	.....do	10,000.00	
			Amount returned to the United States Treasury		1,787.89
			Amount available for expenditure during fiscal year 1898		6,127.38
				167,000.00	167,000.00

STATEMENT No. 5.—*Agreement of September 20, 1872.*

Act of Congress.	Statute. Vol.	Statute. Page.	Object.	Appropriated.	Expended.
			In payment for the claim of the Sissetons and Wahpetons in the lands described in article 2, treaty of February 19, 1867 (payable in 10 installments).		
Feb. 14, 1873	17	456	First installment	$80,000.00	
June 22, 1874	18	167	Second installment	80,000.00	
Mar. 3, 1875	18	441	Third installment	80,000.00	
Aug. 15, 1876	19	192	Fourth installment	80,000.00	
Mar. 3, 1877	19	287	Fifth installment	80,000.00	$800,000.00
May 27, 1878	20	81	Sixth installment	80,000.00	
Feb. 17, 1879	20	310	Seventh installment	80,000.00	
May 11, 1880	21	127	Eighth installment	80,000.00	
Mar. 3, 1881	21	497	Ninth installment	80,000.00	
May 17, 1882	22	88	Tenth installment	80,000.00	
				800,000.00	800,000.00

STATEMENT No. 6.—*Agreement of December 12, 1889.*

Act of Congress.	Statute. Vol.	Statute. Page.	Object.	Appropriated.	Expended.
Mar. 3, 1891	26	1035	Per capita in full of all claims for unpaid annuities, under any and all treaties or acts of Congress, up to July 1, 1890	$376,578.37	
July 13, 1892	27	133	Per capita, to July 1, 1893	55,200.00	
Mar. 3, 1893	27	624	Per capita, to July 1, 1894	18,400.00	
			Per capita, deficiency on installments appropriated by act of March 3, 1891	3,000.00	$521,062.85
Aug. 15, 1894	28	300	Per capita, to July 1, 1895	18,400.00	
Mar. 2, 1895	28	889	Per capita, to July 1, 1896	18,400.00	
June 10, 1896	29	335	Per capita, to July 1, 1897	18,400.00	
June 7, 1897	30	75	Per capita, to July 1, 1898	18,400.00	
			Balance due individuals of Lake Traverse Reservation		5,715.52
				526,778.37	526,778.37

NOTE.—By article 3 of the agreement, annual installments of $18,400 were guaranteed from July 1, 1888, to July 1, 1901—fourteen installments in all. Three of these were appropriated by the act of March 3, 1891, and eight others by subsequent acts, as above indicated, leaving three installments yet to be provided.

STATEMENT No. 7.—*Payments to scouts and soldiers.*

Act of Congress.	Statute. Vol.	Page.	Object.	Appropriated.	Expended.
Mar. 3, 1891	26	1035	To pay scouts and soldiers of the 4 bands, now living, and the descendants of those deceased, not included with those who were parties to the agreement of 1889; to be deemed a full settlement of all unpaid annuities up to June 30, 1890	$126,620.00	
Mar. 3, 1893	27	624	For same purpose, to July 1, 1894	30,666.66	$201,948.44
Mar. 2, 1895	28	889	For same purpose, to July 1, 1901	49,066.64	
			Balance on hand belonging to individual Indians		4,404.86
				206,353.30	206,353.30

STATEMENT No. 8.—*Payment for land ceded, Lake Traverse Reservation, agreement of December 12, 1889.*

Act of Congress.	Statute. Vol.	Page.	Object.	Appropriated.	To credit of Indians in the Treasury.
Mar. 3, 1891	26	1035	To pay for lands on Lake Traverse Reservation, ceded by the agreement of December 12, 1889, estimated at 679,920 acres, at $2.50 per acre, proceeds to be placed to the credit of the Indians, in the United States Treasury, at 5 per cent interest	$1,699,800.00	$1,699,800.00
NOTE.—By Executive order of January 19, 1895, under the provisions of section 27 of the act of March 3, 1891, authority was granted for a per capita payment of $199,800 out of the above principal to the Sissetons and Wapetons of the Lake Traverse Reservation, leaving new principal of					[a] 199,800.00
					1,500,000.00
It is now ascertained that but 608,865.66 acres of land were ceded and conveyed to the United States under the agreement, making an excess of 71,860.48 acres paid for in the above settlement, at $2.50 per acre, amounting to					177,635.85
Leaving the actual principal to which the Indians are entitled					1,322,364.15

[a] $1,671.08 of this amount is still on hand, being unpaid shares due individuals.

STATEMENT No. 9.—*Proceeds of Sioux reservations in Minnesota and Dakota.*

Act of Congress.	Statute. Vol.	Page.	Object.	Amount of sales.	Expended.
Mar. 3, 1863	12	819	Provision was made by this act for the sale of these reservations, and for the use of the proceeds in establishing the Indians in agricultural pursuits. Sales have been made amounting to	$944,810.78	$934,415.61
			Balance on hand due to:		
			Sissetons and Wahpetons, Lake Traverse		9,257.15
			Sissetons and Wahpetons, Devil's Lake		934.62
			Santee Sioux in Nebraska		203.40
				944,810.78	944,810.78

NOTE.—See report for analysis.

STATEMENT No. 10.—*Removal of Indians and payment of damages arising under the provisions of the act of February 16, 1863.*

Act of Congress.	Statute. Vol.	Page.	Object.	Appropriated.	Expended.
Mar. 3, 1863	12	784	For removal, etc	$50,016.60	
May 26, 1864	13	92	For payment of damages	928,411.00 241,963.00	
June 25, 1864	13	172	For removal, etc	113,043.40	
		180	For support	100,000.00	
Mar. 3, 1865	13	559	....do	100,000.00	$1,778,709.4
July 26, 1866	14	279	....do	100,000.00	
Mar. 2, 1867	14	514	....do	100,000.00	
June 22, 1874	18	141	For subsistence and clothing	a 13,942.03	
Mar. 3, 1877	19	549	For damages	2,283.92	
Mar. 3, 1885	23	344	....do	100,000.00	
			Amount returned to the United States Treasury		70,960.5
				1,849,960.01	1,849,960.0

a This amount was not expended, and constituted a part of the sum returned to the Treasury.

STATEMENT No. 11.—*Showing amount of interest collected and expended, arising on funds in the Treasury derived from the sale of lands under the agreement of December 12, 1889.*

Principal on and period for which interest has been paid.	Collected.	Expended.
Interest collected on $1,699,800, at 5 per cent, from Mar. 3, 1891, to May 9, 1895 (date of remittance of the final installment on the $199,800, paid in cash under Executive authority of Jan. 19, 1895), and on $1,500,000, at 5 per cent, from May 10, 1895, to Sept. 30, 1897	$534,298.02	a $534,298.0

a A small balance of this fund remains to the credit of the Indians on the books of the Indian Office which is held to meet obligations already incurred for their education.
Three months' interest on the principal sum will be due on December 31, 1897.

STATEMENT No. 12.—*Sissetons and Wahpetons—General account.*

Dr. Cr.

Disposition of funds.	Amount.	Due under treaties, etc.	Amount.
Expended under treaty of 1851, less overcharge of $15,220.24, in payment of damages to citizens of Minnesota. (Statement No. 1.)	$1,222,875.10	Amount of installments and special funds appropriated from 1852 to 1893, treaty of 1851. (Statement No. 1.)	$1,238,200.00
Expended, treaty of 1858. (Statement No. 2.)	196,352.30	Value of land ceded, treaty of 1858. (Statement No. 2.)	170,880.00
Expended, treaty of 1867, less overcharge of $49,666.07. (Statement No. 3.)	379,741.29	Amount appropriated under treaty of 1867, less amount carried to the "surplus fund." (Statement No. 3.)	429,407.36
Expended for Sissetons and Wahpetons at Devils Lake. (Statement No. 4.)	165,212.11	Value of land at Devils Lake not included in survey of 1875. (Statement No. 4.)	80,000.00
Expended, agreement of 1872. (Statement No. 5.)	800,000.00	Amounts appropriated under treaty of 1867 for Sissetons and Wahpetons at Devils Lake, after agreement of 1889, less amount carried to "surplus fund." (Statement No. 4.)	85,212.11
Expended, agreement of 1889. (Statement No. 6.)	521,092.85	Value of land ceded, agreement of 1872. (Statement No. 5.)	800,000.00
Balance due on hand	[a] 5,715.52	Value of per capita allowances, agreement of 1889. (Statement No. 6.)	526,778.37
Expended, scouts and soldiers. (Statement No. 7.)	201,948.44	Value per capita for scouts and soldiers. (Statement No. 7.)	206,353.30
Balance due on hand	[a] 4,404.86	Value of land ceded, agreement of 1889, $1,699,800, less overcredit of $177,635.85. (Statement No. 8.)	1,522,164.15
Amount placed in the Treasury to the credit of the Lake Traverse Indians, agreement of 1889. (Statement No. 8.)	[b] 1,699,800.00	Value of proceeds of reservations in Minnesota and Dakota, shares of Sissetons and Wahpetons, since July 15, 1870. (Statement No. 9.)	518,364.58
Expended, proceeds of reservations in Minnesota and Dakota since July 15, 1870. (Statement No. 9.)	[c] 508,172.81	Amount of interest collected on land fund. (Statement No. 11.)	534,298.01
Balance due on hand	[d] 10,191.77	Excess of appropriations and payments over amounts due under treaty provisions and value of lands ceded and paid for, not including value of unpaid annuities under treaty of 1851, confiscated by the act of Feb. 16, 1863, per statement No. 13	1,034,971.92
Expended, removal and damages, act of Feb. 16, 1863, share chargeable to Sissetons and Wahpetons. (Statement No. 10.)	889,354.74		
Expended, interest on land fund. (Statement No. 11.)	534,298.01		
Expended for relief of friendly Sioux Indians, act of Feb. 9, 1865. (See report.)	7,500.00		
	7,146,629.80		7,146,629.80

[a] These sums are due to individuals whose shares were not paid at the time of the distribution of the funds.

[b] This sum is $177,635.85 in excess of the actual credit to which the Indians are entitled, on which excess $58,412.98 interest has been paid to them.

[c] The Sissetons and Wahpetons participated jointly with the Santee Sioux in the expenditure of $36,753.66 of the proceeds of these reservations between 1865 and July 15, 1870, when the accounts were divided according to the respective interests of the four bands.

[d] Of this sum $9,257.15 are due to the Indians of the Lake Traverse Reservation and $934.62 to those of the Devils Lake.

STATEMENT No. 13.—*Value of annuities under the treaty of July 23, 1851.*

This treaty guaranteed the payment of 50 annual installments of $73,600 each, in all amounting to		$3,680,000.00
Twelve installments of $73,600 each were appropriated by Congress, amounting to $883,200, and also two-thirds of the installment due in the fiscal year 1864 ($50,000), in all $933,200, of which there were expended under the provisions of the treaty and the act of 1863 the sum of (see statement No. 1)	$933,095.34	
Amount advanced by the act of May 16, 1874, to pay tribal "debts and obligations," per treaty of June 19, 1858, chargeable against confiscated annuities under the act of February 16, 1863 (statement No. 2)	25,472.30	
		958,567.64
Leaving unpaid installments amounting to		2,721,432.36

* * * * * * *

Appendix B.

Department of the Interior,
Washington, December 10, 1862.

Brig. Gen. H. H. Sibley.

Sir: The President has ordered thirty-nine of the Sioux convicted by court-martial to be executed, the order for which, I presume, you have received.

In a conversation with the President since my return from your State, I do not understand from him that he has determined not to approve of the finding of the court in more of the cases; but he finds some difficulty in doing so, because of the meager manner in which the evidence has been reported to him.

Though it is a fact well established in the minds of the people of Minnesota that all of the females captured were ravished by the savages, and that large numbers were engaged in this crime, yet the evidence only discloses two instances in which it was done. The evidence in many other respects is equally unsatisfactory. I advise you of this that you may see and, as far as possible, explain to the people the difficulty in which the President is involved in this unlucky business. It is to be hoped that nothing like mob violence will be attempted; and if there is, that you will be able to check and restrain it. Time will set all things right and justice will be vindicated. The views which I expressed to you concerning the future disposition of the Indians of your State seem to meet with a reasonable approval here; but in order to make proper progress in the affair it is necessary to know whether there should be any discrimination made in favor of the Sisseton and Wahpeton bands. Are these bands, in your judgment, equally involved with the lower bands? And ought they to share with them in making compensation for depredations? What sum will it be necessary to appropriate to make a reasonable compensation for the depredations committed? Believing that you are able to furnish more reliable information upon this subject than any other person in my knowledge, I have addressed you.

Awaiting your reply, I am, very respectfully, your obedient servant,

(Signed) J. P. Usher.

Headquarters District of Minnesota,
Department of the Northwest,
St. Paul, Minn., December 19, 1862.

Hon. J. P. Usher,
Assistant Secretary Interior, Washington, D. C.

Sir: I have received your communication of the 10th instant. The order of the President has been also placed in my hands, and in accordance with it the 39 Indians will be executed on the 26th instant,

the President having subsequently directed a postponement of one week.

In reply to your inquiry, whether the Wahpetons and Sissetons have been involved with the other bands in the late murders and massacres, I beg leave to state that both should be held responsible for participation. The former were to a great extent equally guilty with the lower bands, and the Sissetons, with some of the Cut Head and Eyauktona Sioux, made the attacks on Fort Abercrombie and committed murders and depredations in that quarter. They are now reported as assembled at "Michauds Mound," not far distant from Devils Lake, and preparing, in conjunction with the powerful bands of the Eyauktons and Missouri Yanktons, now assembled at "Devils Lake," and the "Dogs Lodge," to the number of 700 lodges, to renew the attack on Fort Abercrombie and make a general raid upon the settlements so soon as the weather will permit in the spring. This is their avowed design, and they are now engaged in negotiating for the purchase of ammunition with the people of the British colony on Red River. The deputy governor of the Hudson Bay Company promises not to encourage them nor allow his people to sell them powder and lead, but they will doubtless be furnished with all they need by the half-breeds and the petty traders among them, who sympathize with the Indians in their hatred of the Americans. It may safely be assumed, therefore, that all the Sioux north and west of the Missouri River, as well as those on the other side, are hostile, with a few insignificant exceptions, and should be treated as enemies until they are thoroughly subdued.

It is impossible for me to estimate the damages done by the Indians in their late depredation or the sum necessary to meet them. The actual loss incurred by the white settlers along so long a line of frontier, by the abandonment of their crops at the time when they most required their attention, is beyond calculation, and far exceeds in amount the value of the property actually appropriated by the Indians, although that was very large. I do not believe that two millions of dollars would suffice to replace the property of every kind of which the people of this State were robbed, or which they were compelled to abandon to waste and ruin. Wide tracks of country abounding in crops of grain and vegetables, extending almost without interruption for hundreds of miles, were abandoned until the crops were completely destroyed. Cattle by the hundreds were driven off by the Indians or left deserted on the prairie. Numberless horses were taken also. In fact, to form an accurate opinion of the actual condition of things, one must have been an eyewitness, as I have been, to the extent to which this State was deserted by her frontier inhabitants and their property left to perish.

In the matter of the Indian prisoners and the alleged paucity of evidence against them on the record, it should be borne in mind that the military commission appointed by me were instructed only to satisfy themselves of the voluntary participation of the individual on trial in the murders or massacres committed, either by his voluntary confession or by other evidence, and then to proceed no further. The degree of guilt was not one of the objects to be obtained, and indeed it would have been impossible to devote as much time in eliciting the details in each of so many hundred cases as would have been

required while the expedition was in the field. Every man who was condemned was sufficiently proven to be a voluntary participant, and no doubt exists in my mind that at least seven-eighths of those sentenced to be hung have been guilty of the most flagrant outrages, and many of them concerned in the violation of white women and the murder of children.

If additional evidence is required on these points, it can doubtless be obtained by taking the necessary steps to procure it. In my opinion, which I expressed to you verbally, they should all be hung, as a great example which would strike terror into all Indians on the continent and save hundreds, and perhaps thousands, of valuable lives. If any of them are hereafter relieved, the act will be ascribed to fear, and these red devils, panting for revenge, will be ready again for the perpetration of the same deeds, with their untold horrors, which have turned Minnesota into a land of mourning and desolation.

The location of the Indians at the point suggested by you will be made the subject of a future communication.

Meantime I am,

Very respectfully, your obedient servant,

H. H. Sibley,
Brigadier-General, Commanding.

APPENDIX C.

REPORTS FROM THE SECRETARY OF THE INTERIOR OF RECORD IN THE CASE IN THE COURT OF CLAIMS.

Report dated June 17, 1902:

I have the honor to acknowledge the receipt of your letter of the 3d ultimo (G. M. A.), requesting to be furnished with the following information for use in the case of the Sisseton and Wahpeton bands of Sioux Indians *v.* The United States, Court of Claims, No. 22524, viz:

"A debit and credit account showing every cession or sale of lands by the Sisseton and Wahpeton Indians to the United States, beginning with the treaty of 1851, showing in each case the number of acres, under what treaty, agreement, or act ceded, and the price agreed upon to be paid for said land. Against the value of said lands so sold to the United States, show what lands, appropriations, payments, gratuities, or other provisions have been made to or for said bands, or to any of the members thereof, *as if the act of February 15, 1863, had never been passed.* Also taking into consideration the money paid by the Government to citizens on account of the depredations of these Indians during the outbreak of 1862, and show the balance as it may be, either for or against the United States, in balancing up the appropriation, payments, gratuities, etc., above mentioned."

In compliance with your request, I have the honor to report as follows:

Date of treaty, agreement, or act.	Approximate number of acres ceded.	Amount agreed to be paid under treaty, agreement, or act.	Amount actually paid, expended, and on hand Jan. 1, 1902.
Treaty of July 23, 1851 (10 Stat. L., 949)	17,770,000	$3,985,000.00	$2,915,781.75
Treaty of June 19, 1858 (12 Stat. L., 1037), act of Mar. 2, 1861 (12 Stat. L., 237)	569,600	170,880.00	170,880.00
Treaty of June 19, 1858, art. 3 (12 Stat. L., 1038)			25,472.80
Payments made under treaty of Feb. 19, 1867 (15 Stat. L., 505)			464,953.40
Value of land not included in survey of 1875, Mar. 3, 1891 (26 Stat. L., 1010)	64,000	80,000.00	80,000.00
Agreement of Sept. 20, 1872 (12 Stat. L., 281)	11,000,000	800,000.00	800,000.00
Proceeds of Sioux Reservation in Minnesota and Dakota, act of Mar. 3, 1863 (12 Stat. L., 819)	737,084	520,655.88	520,655.88
Agreement of Dec. 12, 1889, ratified by Congress Mar. 3, 1891 (26 Stat. L., 1035)	608,865.66	1,522,164.15	1,522,164.15
Total		7,078,700.03	6,499,907.98
Balance which would be due Indians if act of Feb. 16, 1863, had not been passed			578,792.05

"The foregoing statement shows that if the act of February 16, 1863, had not been passed there would be due the Sisseton and Wahpeton bands of Sioux Indians, under their several treaties and agreements with the United States, the sum of $578,792.05.

"In reply to your request to be furnished, 'against the value of said lands so sold to the United States, show what *lands* * * * have been made to or for said bands,' I would say that no lands are now reserved to or held by said Sisseton and Wahpeton Indians to which they did not have a right of occupancy under former treaties or agreements.

"Of the lands formerly constituting the Lake Traverse and Devils Lake reservations, 441,411.27 acres have been allotted in severalty to individual members of these bands of Indians under the agreement of December 12, 1889 (act of March 3, 1891, 26 Stat. L., 1035), and 98,244 acres of the Devils Lake Reservation are still held in common, under the treaty of February 16, 1867, by the Sissetons, Wahpetons, Medawakantons, and Wapakootas of that reservation, all part of the Sioux of Dakotas.

"$889,354.74 was paid by the Government on account of the depredations, removal, etc., of the Sisseton and Wahpeton Indians during the outbreak of 1862; but this payment constitutes a part of the first debit item of $2,915,781.75 hereinbefore named, and should not be again charged against the Indians."

An additional report, dated May 16, 1903, states:

"In addition to the report submitted by me on June 17, 1902, in reply to your letter of the 3d of May, 1902, in relation to the case of the Sisseton and Wahpeton bands of Sioux Indians *v.* The United States, No. 22524, and at the verbal request from your office, I have the honor to report that in the statement submitted in my letter of June 17, 1902, the total paid and expended under the treaty of July 23, 1851, amounting to $2,915,781.75, is made up of the following items, viz:

12 installments made previous to the outbreak, at $73,000 each, less $104.66 returned to United States Treasury	$883,095.34
Two-thirds of $73,000, appropriated for 1864, as the thirteenth installment	50,000.00
Appropriated for special purposes, as per treaty	305,000.00
Appropriated under agreement of December 12, 1889	581,978.37
Payments of scouts and soldiers	206,353.30
One-half amount for removal and damages arising under act of February 16, 1863 ($1,778,709.48)	889,354.74
	2,915,781.75

Full explanations in regard to these charges can be found in Senate Document No. 68, Fifty-fifth Congress, second session, pages 2 to 16, and especially to the objections made by claimants' attorneys to the charge of $172,404.46.

The charge of $464,953.40, under the treaty of February 19, 1867, is explained as follows:

The sum of $429,407.36 was appropriated from June 27, 1868, to March 3, 1891, from which amount there ought to be deducted $49,666.07 as an overcharge	$379,741.29
The sum of $87,000 was afterwards appropriated for support of Devils Lake Indians, of which $1,787.89 were returned to the Treasury, leaving to be charged	85,212.11
	464,953.40

This money was all used for the necessary support of the Indians and is a proper charge, even if it is true, as contended, that part of this money was used for pay of employees, the different acts of Con-

gress making the appropriations specifying, "including pay of employees," and these being necessary in the distribution of the goods and supplies purchased for the Indians.

In regard to the deduction of $168,970.46 claimed by the attorneys for claimants for payments made to scouts and soldiers, because 113 of the 138 to whom the appropriation of $206,353.30 was paid were not Sisseton and Wahpeton Indians, but belonged to the Medewakanton and Wahpakoota bands, there is not evidence on file in the Department of that fact.

The following report, dated February 4, 1907, was received from the Secretary of the Interior:

"I am in receipt of your letter of the 31st ultimo (G. M. A.), asking for certain additional information for use in the case of the Sisseton and Wahpeton bands of Sioux Indians *v.* The United States, No. 22524. You state:

"'1. The claimants in their reply brief, filed since the last act amending the first reference of the case to the Court of Claims, make the statement on page 8 that the Commissioner of Indian Affairs embodied in his report in Senate Document 168, Fifty-seventh Congress, second session, at page 4, the following statement:

"'"An investigation of the evidence submitted by applicants for enrollment goes to show that of the one hundred and thirty-eight names on the census of the scouts and soldiers made in 1861, sixty-five of them belonged to the Medawakanton and Wahpakoota bands, thirteen to the Sisseston and Wahpeton bands, and sixty doubtful, not finding evidence upon which to identify them as to their bands."

"'Upon the strength of that statement they contend that of the appropriation of $206,353.30 for scouts and soldiers, only one-sixth, amounting to $34,392.22, should be charged against the annuities of the claimants.

"'In your report to this Department, dated May 16, 1903, in the above case, you stated:

"'"In regard to the deduction of $168,970.46 claimed by the attorneys for claimants for payments made to scouts and soldiers, because 113 of the 138, to whom the appropriation of $206,353.30 was paid, were not Sisseton and Wahpeton Indians, but belonged to the Medawakanton and Wahpakoota bands, there is not evidence on file in the Department of that fact."

"'Will you please state, if possible, how these two statements can be reconciled?'"

In reply I can only repeat what was stated in letter from the Department of May 16, 1903, that the charge against the Sisseton and Wahpeton bands of $206,353.30 is correct as stated. In the act of Congress approved June 7, 1897 (30 Stats., 89), separate provisions were made for a report to Congress of a statement in detail of all amounts of sums paid to the Sisseton and Wahpeton bands of Dakota Sioux Indians under treaties mentioned, etc.; also a like report respecting the Santee Sioux Indians of Nebraska and the Flandreau Sioux of South Dakota, "formerly known as and being a confederacy of the Medawakanton and Wapakoota Sioux Indians." Exhaustive reports were submitted by the Department under this legislation, the one in regard to the Sisseton and Wahpeton Indians being known as Senate Document 68, Fifty-fifth Congress, second session, and the other as Senate Document 67, Fifty-fifth Congress, second session.

On page 19 of Document 68 there appears "Statement No. 7. Payment to scouts and soldiers," and as this statement only reports on the resolution concerning the Sisseton and Wahpeton Indians and says that $206,353.30 were paid to these bands and no evidence has been presented to the Department which would justify a change in the amount of this charge, the statement is adhered to. In the report from the Department on the resolution concerning the Santee Sioux of Nebraska and Flandreau Sioux of South Dakota, formerly known as a confederacy of the Medawakanton and Wahpakoota bands of Dakota, known as Document 67, above mentioned, no charge is made against the Indians for any part of the $206,353.30 paid to scouts and soldiers, and this total amount should remain charged to the Sisseton and Wahpeton Indians.

"2. At the time of the outbreak, in 1862, the Sisseton and Wahpeton Indians were living on a strip of land 10 miles wide, on the south side of the Minnesota River, above the Yellow Medicine River, in Minnesota.

"Please state whether these Indians were removed from that reservation in the State of Minnesota in consequence of the outbreak, and whether that reservation was afterwards sold and the proceeds placed to their credit."

After the war a treaty was made with these Indians (treaty of Feb. 19, 1867, 15 Stats., 505), which in articles 3 and 4 provided that there was set apart

"for the members of said bands who have heretofore surrendered to the authorities of the Government and were not sent to the Crow Creek Reservation, and for the members of said bands who were released from prison in 1866, the following-described lands as a permanent reservation."

Then follows description of the land. Under the act of March 3, 1863 (12 Stats., 819), the lands in Minnesota were sold and the proceeds, $944,810.78, were divided among the four bands. (See p. 10, S. Doc. 68, 55th Cong., 2d sess., and also statement 9, p. 19, same document.)

"3. State whether the records of your Department show that the Sisseton and Wahpeton Indians were removed to new homes, and whether the money charged to them for removal and support was for removal to and support at their new homes."

The sum of $944,810.78, as shown above, being "Proceeds of Sioux reservations in Minnesota and Dakota," under which title the proceeds of their lands, sold under the act of March 3, 1863, have been carried on the books of the Treasury, was used in establishing them in their new homes and were expended for the benefit of these Indians.

"4. In your report to this Department dated December 7, 1906, in setting out the items charged against the claimants and objected to by their attorneys, you stated one item: 'Expended for Sisseton and Wahpeton, for support and payment for land, $165,212.11.' The claimants in their reply brief, page 19, state that this sum was charged against them in the amount of $464,953.40, expended under the treaty of February 19, 1867, and was charged against them a second time.

"Please state whether that is correct, and if not, the reasons therefor."

The sum of $464,953.40 expended for the benefit of these Indians consists of $514,619.47, appropriated under the treaty of February 19, 1867, less $49,666.07 as an overcharge, and was expended for the benefit of these Indians, as explained in Department letter to you of May 16, 1903.

The letter from the Department of December 7, 1906, was in reply to objections by the attorneys for claimants to certain charges made by the Department, and among them was one of $165,212.11 reported as "Expended for Sisseton and Wahpeton for support and payment for land." This item should not have been charged under that heading, as part of the amount was included in the charge of $464,953.40, expended under the treaty of February 19, 1867. In its place there should have been charged as "Payments to scouts and soldiers" the sum of $168,970.46, the amount objected to by claimants' attorneys for "Payment to scouts and soldiers," which payment is adhered to by the Department as a proper charge against the Sisseton and Wahpeton Indians.

Very respectfully,

(Signed) E. A. Hitchcock,
Secretary Interior.

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